CIVIL RIGHTS RESTORATION ACT OF 1985

JOINT HEARINGS

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR

AND THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 700

CIVIL RIGHTS RESTORATION ACT OF 1985

HEARINGS HELD IN PHILADELPHIA, PA, MARCH 4; WASHINGTON, DC, MARCH 7, 27, 28, AND APRIL 2; ATLANTA, GA, MARCH 11; CHICAGO, IL, MARCH 15; LOS ANGELES, CA, MARCH 22; AND SANTA FE, NM, MARCH 25, 1985

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CONTENTS

Hearings held in:

	Page
Philadelphia, PA, March 4, 1985	1
Washington, DC, March 7, 1985	173
Atlanta, GA, March 11, 1985	313
Chicago, IL, March 15, 1985	403
Los Angeles CA, March 22, 1985	597
Santa Fe, NM, March 25, 1985	737
Washington, DC, March 27, 1985	853
Washington, DC, March 28, 1985	1149
Washington, DC, April 2, 1985	1217
Text of H.R. 700	3

Statements of:

Anaya, Toney, Governor of New Mexico	744
Beenhouwer, Bernie, New Mexico League of Women Voters	765
Berry, Mary Frances, Commissioner, U.S. Commission on Civil Rights	1260
Blake, Elias, president, Clark College, Atlanta, GA	346
Bovitz, Carole, State division president, American Association of University Women; Virna Canson, west coast regional director, NAACP, San Francisco, CA; Eugene S. Mornell, executive director, Los Angeles County Commission on Human Relations, Los Angeles, CA; Renee Campbell, member, National Board of the Girl Scouts of America; Mary Bergan, director of legislation, California Federation of Teachers, Sacramento, CA; and Gloria Kapp, national steering committee member, National Women's Political Caucus, Los Angeles, CA	682
Bustillos, Teresa Fay, staff attorney, Mexican American Legal Defense and Education Fund, Los Angeles, CA; Sylvia Drew Ivie, National Health Law Center, Los Angeles, CA; Robert Gregg, president, Association of American Physicians & Surgeons, Covina, CA; Barbara Waxman, Venice, CA; and Carol Gill, Ph.D., Van Nuys, CA	705
Byron, Rev. William	1023
Cantor, Muriel, American Association of University Professors, accompanied by Dr. Leslie Francis, Committee on Status of Women in the Academic Profession, American Association of University Professors	1154
Coelho, Hon. Tony, Member of Congress, California	224
Daylie, Rosetta, president, council 31, American Federation of State, County, and Municipal Employees; Margaret Blackshere, director of legislation, Illinois Federation of Teachers; Raymond A. Bolden, Esq., branch president, NAACP, Joliet, IL; and Rev. George E. Riddick, staff vice president, Operation Push	422
de Bernardo, Mark A., manager of labor law, Chamber of Commerce of the United States	1267
Demme, Steven P	357
Donati, Donald A., Esq., attorney, Memphis, TN; Gordon Bonnyman, Esq., staff attorney, Legal Services of Middle Tennessee; Marca Bristo, executive director, Access Living; F. Willis Caruso, general counsel, Leadership Council for Metropolitan Open Communities; and Kenneth Williams, housing coordinator, Access Living	562
Espinoza, Rosemarie Z., Albuquerque public schools; Hal Visick, Brigham Young University; Preston Oade, Mountain States Legal Foundation; Claudeen Arthur, attorney general, Navajo Nation; and Ruth Luchasson, University of New Mexico	774
Farber, Steven G	778
Fish, Hon. Hamilton, Jr., Member of Congress, New York	175
Fleishman, Stanley, Esq., Los Angeles, CA; Julie Hiller, Pacific Palisades, CA; and John Calmore, Western Center, Los Angeles, CA	642

Page

Statements of—Continued

Flemming, Dr. Arthur, chairman, Citizen's Commission on Civil Rights 213
Foglietta, Hon. Thomas M., a Representative in Congress from the State of Pennsylvania 16
Futrell, Mary Hatwood, president, National Education Association, accompanied by Linda Tarr-Whelan, director, Government Relations Division, National Education Association 1150
Gray, Hon. William H., III, a Representative in Congress from the State of Pennsylvania 14
Gardner, Ayres, Georgia Legal Services Program; Mary Ann B. Oakley, Esq., Atlanta, GA; Addie Scott Powell, Bethlehem Area Community Association, Augusta, GA 387
Goldsmith, Ms. Judy, president National Organization for Women 194
Hackney, Sheldon, president, University of Pennsylvania, Philadelphia, PA; Charles S. MacKenzie, president, Grove City College, Grove City, PA; Rhoda Schulzinger, staff director, Full Access Rights to Education, New York, NY; Hilda Gore, director of admissions, Samuel Gompers Vocational Educational and Technical High School, Bronx, NY; and Marilyn Reeves, Jr., Samuel Gompers Vocational Educational and Technical High School, Bronx, NY 25
Hafen, Bruce 1106
Hehir, Rev. Bryan 1071
Hooks, Benjamin L., executive director, National Association for the Advancement of Colored People 191
Hoppes, Alice, State board member, NAACP 742
Johnson, Jondelle, executive director of Atlanta chapter of the NAACP; and Jonathan Zimring, Esq 327
Johnson, Patricia 389
Johnston, David, senior vice president, Wheaton College; Gary Orfield, professor of political science, public policy and education, University of Chicago; Josephine E. Holzer, executive director, Council for Disability Rights; Cris Matthews, disability rights coordinator, Access Living; Ralph Keen III, Esq., the Illinois Association of Christian Schools and the Illinois Christian Action Network; Susannah Smith, Esq., assistant Illinois attorney general, disabled persons advocacy division; and James P. Roberts, assistant dean, College of Dentistry, University of Illinois 444
Johnston, Lowell, NAACP Legal Defense Fund, Inc 1308
Jones, Gordon, vice president for government and academic relations, Heritage Foundation 1264
Kapp, Robert H 1038
Kohn, Margaret, National Women's Law Center 1193
Levine, Hon. Mel, a Representative in Congress from the State of California 601
Lowe, Linda, Georgia Legal Services, Atlanta, GA; Willie Mitchell, Newnan, GA; and Rims Barber, Children's Defense Fund, Jackson, MS.. 371
Marcus, Dan, Esq., Wilmer, Cutler & Pickering 1180
Mayerson, Arlene B., Disability Rights Education and Defense Fund 1201
McEwen, William, National Association of Manufacturers; Tom Wenning, National Grocers Association; and Margot Polivy, Esq., Renouf & Polivy 855
Miller, Cheryl, University of Southern California; Linda Sharp, women's coach for the University of Southern California, Los Angeles, CA; Raymond Johnson, president, Los Angeles chapter, NAACP, Los Angeles, CA; Catherine Campisi Johns, president, Association on Handicapped Student Service Programs in Postsecondary Education, San Diego, CA; William Barclay Allen, professor, Harvey Mudd College, Claremont, CA; Paul A. Kienel, executive director, Association of Christian Schools International, Whittier, CA; and Bill Lann Lee, Center for Law in the Public Interest, Los Angeles, CA 608
Miller, Eric, Esq., executive director, Citizens Concerned for the Constitution, Indianapolis, IN; Anne McCracken, on behalf of the Illinois Small Businessmen's Association; and Edwin R. Clarke II, president, American Federation of Small Business 528
Mineta, Hon. Norman Y., Member of Congress, California 185
Montano, Louie 752
Ortiz, Joe, American Image Group 771
Pendleton, Clarence, Chairman, and Linda Chavez, U.S. Commission on Civil Rights 1219

Page

Statements of—Continued

- Perry, Susan M 360
- Pettit, Joseph, president, Georgia Institute of Technology, Atlanta, GA 343
- Reynolds, William Bradford, Assistant Attorney General, Department of Justice 236
- Robinson, Battle Rankin, chair, Higher Education Title VI Commission for the State of Delaware, accompanied by Barbara Daniel Cox, executive director, Mayor's Commission on Women, Philadelphia, PA; Hon. Angel Ortiz, councilman, Philadelphia, PA; Rev. Sam Hart, Philadelphia, PA; and Carol Tracey, Womens Law Project, Philadelphia, PA 117
- Rose, Marilyn, Jacksonville Area Legal Aid, Jacksonville, FL; Howard Phillips, chairman, Conservative Caucus; Louise Crooks, vice president, American Association of Retired Persons; Jack Powell, Paralyzed Veterans of America; Larry Gold, general counsel, AFL–CIO; Sarah Harder, legislative program chair, American Association of University Women; and Brownie Leadbetter, Little Rock, AR 955
- Roybal, Cindy, Santa Fe Indian School 764
- Salisbury, Carnis, National Council of Negro Women; Susan Loubet, president, National Women's Political Caucus of New Mexico; Ralph Markward, president, Zia chapter, Paralyzed Veterans of America; David Montoya, New Mexico State Human Rights Commission; and Paul Nathanson, School of Law, University of New Mexico 753
- Schneider, Hon. Claudine, Member of Congress, Rhode Island 267
- Shane, Ilene, Developmental Disabilities Law Project, Philadelphia, PA; Jeffrey Altman, American Society of Clinical Pathologists, Washington, DC; and Charisse Lillie, National Conference of Black Lawyers, Philadelphia, PA 136
- Singleton, Harry, Assistant Secretary for Civil Rights, Department of Education 299
- Tatel, David, Esq., Hogan & Hartson; and Dan Marcus, Esq., Willmer, Cutler & Pickering 1175
- Taylor, William, on behalf of the Center for National Policy Review and the Leadership Conference on Civil Rights:
  - March 27, 1985 894
  - April 2, 1985 1291
- Vera, Ron, Mexican-American Legal Defense and Education Fund 1207
- Washington, Hon. Harold, mayor of the city of Chicago 406
- Yandle, Reece 350
- Young, Andrew, mayor of the city of Atlanta 315
- Zucker, Jack, acting legislative director, Gray Panthers; and Rev. James Allen, chairman, Philadelphia Human Relations Commission, Philadelphia PA 18

Prepared statements, letters, supplemental materials, et cetera:

- Allen, W.B., professor, Harvey Mudd College, Claremont, CA, prepared statement of 623
- Altman, Jeffrey P., on behalf of the American Society of Clinical Pathologists, prepared statement of 143
- American Farm Bureau Federation, prepared statement of 1131
- Anaya, Toney, Governor, State of New Mexico, prepared statement of 748
- Barber, Rims, director, Mississippi Project, Children's Defense Fund, prepared statement of 282
- Bergan, Mary, legislative director, California Federation of Teachers, AFT, AFL–CIO, prepared statement of 691
- Berry, Mary Frances, member of the U.S. Commission on Civil Rights, prepared statement of 1261
- Blake, Elias, Jr., president, Clark College, Atlanta, GA, prepared statement of 349
- Bonnyman, Gordon, Legal Services of Middle Tennessee, prepared statement of 576
- Bovitz, Carole, president, California State Division, American Association of University Women prepared statement of 684
- Bustillos, Teresa Fay, staff attorney, Mexican-American Legal Defense and Education Fund, prepared statement of 708
- Byron, Rev. William J., S.J., president, the Catholic University of America, prepared statement of 1027
- Campbell, Renee, prepared statement on behalf of the Girls Clubs of America 689

Page

Prepared statements, letters, supplemental materials, et cetera—Continued

- Canson, Virna M., regional director, West Coast Region NAACP, prepared statement of 698
- Cantor, Muriel G., professor of sociology, American University, on behalf of the American Association of University Professors, prepared statement of 1156
- Caruso, F. Willis, general counsel, Leadership Council for Metropolitan Open Communities, prepared statement of 586
- Chase, J. Richard, president, Wheaton College, prepared statement with attachment 446
- Chavez, Linda, Staff Director of the U.S. Commission on Civil Rights, prepared statement of 1228
- Citizen's Commission on Civil Rights, prepared statement of 218
- Coelho, Hon. Tony, a Representative in Congress from the State of California, prepared statement of 224
- Compton, James, president, Chicago Urban League:
  - Letter dated March 15, 1985, to Hon. Don Edwards 415
  - Prepared statement of 416
- Crooks, Louise, vice president, American Association of Retired Persons, prepared statement of 966
- Daylie, Rosetta, American Federation of State, County and Municipal Employees, prepared statement of 424
- de Bernardo, Mark A., prepared statement on behalf of Chamber of Commerce of the United States 1271
- Demme, Steven P., pastor, Open Door Chapel, McDonough, GA, prepared statement of 359
- Disability Rights Education and Defense Fund, prepared statement of 823
- Donati, Donald A., Esq., prepared statement of 565
- Edgar, Hon. Bob, a Representative in Congress from the State of Pennsylvania, prepared statement of 171
- Espinoza, Rosemarie Z., Albuquerque Public Schools, prepared statement of 776
- Fish, Hon. Hamilton, Jr., a Representative in Congress from the State of New York, prepared statement of 175
- Fleishman, Stanley, professor, Southwestern University School of Law, prepared statement of, with appendix 647
- Flemming, Arthur S., chairman, Citizen's Commission on Civil Rights, prepared statement of 216
- Futrell, Mary Hatwood, president, National Education Association, prepared statement of 1152
- Garcia, Hon. Robert, a Representative in Congress from the State of New York, prepared statement of 950
- Gill, Dr. Carol J., director of rehabilitation psychology, Glendale Adventist Medical Center, prepared statement of 729
- Gold, Laurence, general counsel, AFL–CIO, prepared statement of 1001
- Goldsmith, Judy, president, National Organization for Women, prepared statement with attachment 195
- Gray, Hon. William H., III, a Representative in Congress from the State of Pennsylvania, prepared statement of 15
- Gregg, Robert H., M.D., president, Association of American Physicians and Surgeons, prepared statement of 720
- Gunderson, Hon. Steve, a Representative in Congress from the State of Wisconsin, opening statement of 315
- Hackney, Sheldon, president, University of Pennsylvania, prepared statement of 102
- Hafen, Bruce C., prepared statement with appendix 1112
- Harder, Sarah, prepared statement 958
- Hart, Dr. B. Sam, president, Grand Old Gospel Fellowship, Inc., prepared statement of 124
- Hawkins, Hon. Augustus F., a Representative in Congress from the State of California and chairman, House Committee on Education and Labor:
  - Letter dated April 17, 1985, from William Bradford Reynolds, responding to questions 258
  - Opening statement of March 22, 1985 598
  - Opening statement of April 2, 1985 1217
- Hehir, Rev. J. Bryan:
  - Prepared statement on behalf of the United States Catholic Conference 1075

Page

Prepared statements, letters, supplemental materials, et cetera—Continued

Hehir, Rev. J. Bryan—Continued
    Analysis of Civil Rights Restoration Act of 1985 and Civil Rights Amendments Act of 1985 1083
Hiller, Julie Ann, prepared statement of 678
Holmen, Phyllis J., attorney at law, and Linda Lowe, health planner, Georgia Legal Services Program, Douglasville, GA, letter dated May 3, 1983 374
Holzer, Josephine, prepared statement on behalf of the Council for Disability Rights 486
Hooks, Benjamin L., executive director, National Association for the Advancement of Colored People, prepared statement of 193
Hoppes, Alice F., NAACP, prepared statement of 743
Ivie, Sylvia Drew, director, National Health Law Program, prepared statement of 715
Jeffords, Hon. James M., a Representative in Congress from the State of Vermont, prepared statement of 600
Johnson, Jondelle, executive director of Atlanta chapter of the NAACP, prepared statement of 328
Johnson, Raymond L., president, Los Angeles NAACP, prepared statement of 614
Jones, Gordon S., vice president, government and academic relations, Heritage Foundation, prepared statement of 1266
Kapp, Gloria, prepared statement on behalf of the National Women's Political Caucus 694
Kapp, Robert H., co-chairman, Lawyers' Committee for Civil Rights Under Law, prepared statement of 1040
Keen, Ralph S., III, Esq., prepared statement on behalf of the Illinois Association of Christian Schools and the Illinois Christian Action Network 510
Kienel, Dr. Paul A., Association of Christian Schools International, prepared statement of 629
Kohn, Margaret A., National Women's Law Center, prepared statement of 1196
Leadbetter, Brownie, prepared statement of 1011
Lee, Bill Lann, Esq., prepared statement of 632
Levine, Hon. Mel, a Representative in Congress from the State of California, prepared statement of 603
Lillie, Charisse R., professor, on behalf of the Philadelphia chapter, National Conference of Black Lawyers, prepared statement of 137
Loubet, Susan Thom, president, National Women's Political Caucus, prepared statement of 758
Luckasson, Ruth, prepared statement of 817
MacKenzie, Charles S., president, Grove City College, prepared statement of 97
Marcus, Daniel, Esq., Wilmer, Cutler & Pickering, prepared statement of.. 1182
Matthews, Chris, disability rights coordinator, Access Living, Chicago, IL, prepared statement of 494
Mayerson, Arlene B., Disability Rights Education and Defense Fund, prepared statement of 1204
McCracken, Anne, Illinois Small Businessmen's Association, prepared statement of 551
McEwen, William S., director, Equal Opportunity Affairs, Monsanto Co., prepared statement on behalf of the National Association of Manufacturers 859
McGovern, James, cover letter dated March 15, 1985, to Chairman Hawkins and Hon. Don Edwards 486
Miller, Eric, executive director, Citizens Concerned for the Constitution, prepared statement of 532
Mineta, Hon. Norman Y., a Representative in Congress from the State of California, prepared statement of 187
Mornell, Eugene S., executive director, Los Angeles County Commission on Human Relations, prepared statement of 686
Oade, Preston, Mountain States Legal Foundation, prepared statement of. 806
Orfield, Gary, professor, University of Chicago, prepared statement with attachments 465

Page

Prepared statements, letters, supplemental materials, et cetera—Continued
- Pendleton, Clarence M., Jr., Chairman of the U.S. Commission on Civil Rights:
  - Concurring statement of Commissioner Robert A. Destro 1225
  - Prepared statement of 1221
  - "Truth in Legislation and the Civil Rights Restoration Act of 1985," statement of Commissioners Morris B. Abram and John H. Bunzel.. 1224
- Phillips, Howard, chairman, the Conservative Caucus, Inc., prepared statement of 981
- Powell, R. Jack, executive director, Paralyzed Veterans of America, prepared statement of 988
- Reynolds, William Bradford, Assistant Attorney General, Civil Rights Division, Department of Justice, prepared statement of 231
- Robinson, Battle R., chairperson, Higher Education Title IV Commission, State of Delaware, prepared statement of 120
- Rose, Marilyn G., Jacksonville Area Legal Aid, Inc., Jacksonville, FL, prepared statement of 974
- Salisbury, Carnis, Labor and Industry Committee, National Council of Negro Women, prepared statement of 755
- Schneider, Hon. Claudine, a Representative in Congress from the State of Rhode Island:
  - List of cases 269
  - Prepared statement of 266
- Schulzinger, Rhoda, staff director, Full Access and Rights to Education Coalition:
  - "Inch By Inch," a report entitled 29
  - Prepared statement of 94
- Shane, Ilene W., Esq., director, Developmental Disabilities Law Project:
  - Excerpt from Code of Federal Regulations, July 1, 1984 162
  - Excerpt from Federal Register, dated June 3, 1980, vol. 45, No. 108 164
  - Prepared statement of 146
- Singleton, Harry M., Assistant Secretary for Civil Rights, Department of Education, prepared statement with attachments 288
- Smith, Susannah, prepared statement on behalf of the Illinois attorney general's office 515
- Tatel, David S., Esq., Hogan & Hartson, prepared statement of 1177
- Taylor, William, prepared statement on behalf of the Center for National Policy Review, Catholic University School of Law, and the Leadership Conference on Civil Rights:
  - March 27, 1985 895
  - April 2, 1985 1295
- Tracy, Carol E., on behalf of the Women's Law Project, prepared statement of 127
- Vera, Ronald T., Mexican-American Legal Defense and Education Fund, prepared statement of 1209
- Visick, H. Hal, prepared statement on behalf of Jeffrey R. Holland, president, Brigham Young University, with attachments 782
- Washington, Harold, mayor, city of Chicago, IL, prepared statement of 409
- Waxman, Barbara Faye, prepared statement of 725
- Wenning, Thomas F., National Grocers Association, prepared statement of 874
- Yandle, Reece, executive director, South Carolina Association of Christian Schools, prepared statement of 352
- Zucker, Jack S., acting legislative representative, Gray Panthers, prepared statement of 19

CIVIL RIGHTS RESTORATION ACT OF 1985

MONDAY, MARCH 4, 1985

House of Representatives, Committee on Education and Labor, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary,
Philadelphia, PA.

The committees met, pursuant to call, at 9:30 a.m. at the Visitors' Center, Orange Theater, Independence National Historic Park, Philadelphia, PA, Hon. Don Edwards (chairman of the subcommittee) presiding.

Members present: Representatives Crockett, Hayes, Martinez, Sensenbrenner, and Owens.

Staff present: Ivy L. Davis, assistant counsel; and Phil Kiko, associate counsel of the Subcommittee on Civil and Constitutional Rights and Karen S. Vagley, counsel of the Committee on Education and Labor and Electra E. Beahler, minority counsel.

Mr. Edwards. The subcommittee will come to order. Good morning. Today the Committee on Education and Labor of the House of Representatives, the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, begin a series of hearings throughout the country on H.R. 700, the Civil Rights Restoration Act of 1985.

I am sure all of us sitting at this table believe that it is fitting that we begin these hearings in the city of Philadelphia, the birthplace of the fundamental principles set forth in our Constitution, which guarantees to all men and women full employment of our inalienable rights. Since the Constitution was written, that guarantee has been extended by law to minorities, to women, to the disabled, and to the aged.

But as we will learn here and in the other cities to which we will take these hearings, Atlanta, Chicago, Los Angeles, Santa Fe, and Washington, DC, those inalienable rights are not yet enjoyed by us all. They are denied to many because of discrimination.

Twenty years ago, the U.S. Congress adopted the principle that racial discrimination cannot be practiced in Federally funded programs. The law embodying this principle, title VI of the 1964 Civil Rights Act, was so effective, it changed a once legally sanctioned racially segregated American society into a more integrated one. It opened up this society. So effective was this law, it became the model for other laws which opened up this society to women, to the disabled, and to the aged.

Because of a Supreme Court ruling about a year ago, this Congress must once again reaffirm its commitment to the principles that Federal tax dollars cannot be used to subsidize discrimination.

We must do so by amending four laws which, together, prohibit discrimination on the basis of race, color, national origin, sex, handicap, and age in programs receiving Federal financial assistance.

Billions of dollars from the taxpayers flow to State and local governments and to public and private entities to provide, for example, health care, education, transportation, and social services. In return, the only strings attached to the receipt of these funds is that the receiving program operate in a nondiscriminatory manner.

Now, this bill, H.R. 700, has been cosponsored by 170 Members of the House of Representatives—a bipartisan group—and almost 50 members of the Senate on a bipartisan basis have expressed support for the same legislation, which is designed to restore these four laws to the effectiveness and vitality which was their hallmark prior to the court's ruling. We are very, very pleased to begin our hearings here in this great and historic city.

[Text of H.R. 700 follows:]

99th CONGRESS
1st Session

H. R. 700

To restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

IN THE HOUSE OF REPRESENTATIVES

January 24, 1985

Mr. Hawkins (for himself, Mr. Edwards of California, Mr. Fish, Mr. Jeffords, Mr. Rodino, Mr. Conyers, Mrs. Schroeder, Mr. Miller of California, Mr. Tauke, Mrs. Burton of California, Mr. Frank, Mr. Ackerman, Mr. Boucher, Mr. Feighan, Mr. Kastenmeier, Mr. Schumer, Mr. Crockett, Mr. Martinez, Mr. Williams, Mr. Kildee, Mr. Clay, Mr. Owens, Mr. Hayes, Mrs. Schneider, Ms. Snowe, Mr. Addabbo, Mr. Savage, Mr. Dymally, Mr. Frenzel, Mr. Morrison of Connecticut, Mrs. Kennelly, Mr. Coelho, Mr. Wheat, Mr. Scheuer, Mr. Leland, Mr. Richardson, Mr. Mineta, Mr. Vento, Mr. Moody, Mrs. Johnson, Mr. Torres, Mr. de Lugo, Mr. Garcia, Mr. Roybal, Mr. Bustamante, Mrs. Collins, Mr. Dellums, Mr. Gray of Pennsylvania, Mr. Mitchell, Mr. Stokes, Ms. Oakar, Ms. Kaptur, Ms. Mikulski, Mr. Fauntroy, Mrs. Boxer, Mr. Towns, Mr. Carper, Mr. McKernan, Mr. Fuster, Mr. Andrews, Mr. Conte, and Mr. Dixon) introduced the following bill; which was referred jointly to the Committees on Education and Labor and the Judiciary

---

A BILL

To restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Restoration Act of 1985".

FINDINGS OF CONGRESS

SEC. 2. The Congress finds that—

(1) certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; and

(2) legislative action is necessary to restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered.

EDUCATION AMENDMENTS AMENDMENT

SEC. 3. (a) Title IX of the Education Amendments of 1972 is amended by adding at the end the following new section:

"INTERPRETATION OF 'PROGRAM OR ACTIVITY'

"SEC. 908. For the purposes of this title, the term 'program or activity' means all of the operations of—

"(1)(A) a department or agency of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a university or a system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(3) a corporation, partnership, or other private organization; or

"(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.".

(b) The third sentence of section 902 of the Education Amendments of 1972 is amended—

(1) by striking out "program, or part thereof, in which" and inserting in lieu thereof "assistance which supports"; and

(2) by striking out "has been so found" and inserting in lieu thereof "so found".

REHABILITATION ACT AMENDMENT

SEC. 4. Section 504 of the Rehabilitation Act of 1973 is amended—

(1) by inserting "(a)" after "Sec. 504."; and

(2) by adding at the end the following new subsection:

"(b) For the purposes of this section, the term 'program or activity' means all of the operations of—

"(1)(A) a department or agency of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a university or a system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(3) a corporation, partnership, or other private organization; or

"(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.".

AGE DISCRIMINATION ACT AMENDMENT

Sec. 5. (a) Section 309 of the Age Discrimination Act of 1975 is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting "; and" in lieu thereof; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) the term 'program or activity' means all of the operations of—

"(A)(i) a department or agency of a State or of a local government; or

"(ii) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(B)(i) a university or a system of higher education; or

"(ii) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(C) a corporation, partnership, or other private organization; or

"(D) any other entity determined in a manner consistent with the coverage provided with respect to entities described in subparagraph (A), (B), or (C);

any part of which is extended Federal financial assistance.".

(b) The second sentence of section 305(b) of the Age Discrimination Act of 1975 is amended by striking out "particular program or activity, or part of such program or activity, with respect to which such finding has been made" and inserting in lieu thereof "assistance which supports the noncompliance so found".

CIVIL RIGHTS ACT AMENDMENT

SEC. 6. (a) Title VI of the Civil Rights Act of 1964 is amended by adding at the end the following new section:

"SEC. 606. For the purposes of this title, the term 'program or activity' means all of the operations of—

"(1)(A) a department or agency of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a university or a system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(3) a corporation, partnership, or other private organization; or

"(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.".

(b) The third sentence of section 602 of the Civil Rights Act of 1964 is amended—

(1) by striking out "program, or part thereof, in which" in paragraph (1) and inserting in lieu thereof "assistance which supports"; and

(2) by striking out "has been so found" in paragraph (1) and inserting in lieu thereof "so found".

Mr. EDWARDS. We thank the people of Philadelphia for their hospitality. It is a real thrill for me all the way from California to be here. I now yield to the ranking Republican member of the subcommittee, the very distinguished gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman. First of all, I would like to ask unanimous consent that this hearing may be broadcast, photographed by either motion picture, television, or still photography, pursuant to rule 5 of the Rules of the Judiciary Committee and the appropriate rule of the Committee on Education and Labor.

Mr. EDWARDS. Without objection, so ordered.

Mr. SENSENBRENNER. Thank you, Mr. Chairman. It is very impressive to begin hearings on H.R. 700, the Civil Rights Restoration Act of 1985, here in Independence Hall.

I sit here in awe, thinking about the momentous decisions that were made by our forefathers at the beginning of our Republic.

The Declaration of Independence and our Constitution stand for the protections of the civil rights of all our citizens.

However, I am very concerned about how civil rights is approached by the House Judiciary Committee's Subcommittee on Civil and Constitutional Rights. For example, the ratio of Democratic to Republican members on the Subcommittee on Civil and Constitutional Rights is 5 to 3.

As the majority side knows, despite the fact that in the recent election there was about a 50–50 vote overall, Democrats to Republicans, because of the ways districts are drawn, there is a 58-percent/42-percent ratio in the House of Representatives. An amendment offered by Congressman Lungren at the Judiciary Committee organizational meeting, which would have insured the one-man, one-vote principle, was defeated.

It strikes me as outrageous that those who have laid down before the authorities for South Africans, who have labored long and hard for disadvantaged minorities, would be willing to cast aside the crucible upon which democratic institutions are based, that of one man, one vote, in favor of retaining control over a specific political agenda.

Last fall, the American people voted for a House of Representatives roughly 60 percent of which were to be Democrats and the remaining 40 percent Republicans. The Senate of the United States, controlled by the party of Lincoln, has a firm rule which mandates that its committees and subcommittees reflect the makeup of the body as a whole. But in the House, where political agendas are more important than the people, there is no such rule. The ratio in the Subcommittee on Civil and Constitutional Rights, of all subcommittees, remains at last year's level; this, despite a change in virtually all the other subcommittees of the Judiciary Committee.

Thus, the minority party has been short-changed on the subcommittee that is to protect our civil and constitutional rights. If this is not an example of a double standard, I do not know what is.

It seems very strange that the Subcommittee on Civil and Constitutional Rights, which spends a tremendous amount of time dealing with fairness, which spends a tremendous amount of time dealing with due process, which spends a tremendous amount of time analyzing court cases, will disregard the principle of one man, one vote because, we are told it is for the convenience of some members or, perhaps, because we have been given a fair break on 5 out of the 7 subcommittees.

I am not asking for the cartographic skills of democratic legislators, which have been amply rewarded in the last election by electing more Democrats to this body, contrary to the popular vote. But the House Judiciary Subcommittee on Civil and Constitutional Rights, the lawyers of America, the protectors of the Constitution and our civil rights laws, ought to be more sensitive to fairness, especially the so-called party of fairness, the party of compassion, the party that defended the Constitution against the degradations of Watergate.

Even more disturbing than the citizens of our country being robbed of their right to vote through the committee and subcommittee ratios is the suggestion that was recently made by two civil rights commissioners that the U.S. Constitution and our civil rights laws, some of which the proponents of H.R. 700 are attempting to amend, do not apply to all Americans.

In a supplementary statement filed to a Civil Rights Commission report, Commissioners Mary Frances Berry and Blandina Cardenas Ramirez stated, and I quote,

> Civil rights laws were not passed to give civil rights protection to all Americans, as the majority of this Commission seems to believe. Instead, they were passed out of a recognition that some Americans already had protection because they belonged to a favored group; and others, including blacks, Hispanics, and women of all races, did not because they belonged to disfavored groups.

Mr. Chairman, it is a sad day in this country's history when two commissioners who have been closely associated with the civil rights movement made the argument that the civil rights laws and the U.S. Constitution are not, and I emphasize not, colorblind.

The 13th, 14th, and 15th amendments, which are the linchpins of our civil rights laws, speak in terms of citizens. They made no distinction on the basis of color. Even the Washington Post, which has for years supported the civil rights movement, blanched at this statement.

A Post editorial last week stated:

> This is not to say, however, that these constitutional provisions and laws do not apply to all Americans. The 14th amendment mentions no special groups. The civil rights statutes repeatedly use phrases such as "no citizen may be denied" and "every individual has a right . . ." Civil Rights leaders for 120 years have sought to guarantee equal treatment for all citizens, not special rights for some only. For a time, public attention has properly been given to the needs of some groups because they have suffered discrimination for so long. But this does not diminish, and should not infringe upon the rights guaranteed to others. It demands the statutes at issue to regard them as mere compensatory laws or programs for preferential treatment. They are the affirmation of fundamental rights and values shared by all Americans and belonging to each.

Mr. Chairman, I have not yet made up my mind about whether I will support H.R. 700. While I was a cosponsor of H.R. 5490, the Civil Rights Act of 1984, I feel there was a problem with truth in advertising as to what proponents said was in the bill and what actually was included. As we know it, H.R. 5490 was defeated in the Senate.

You should also know that originally I was asked by the administration to introduce a companion bill to S. 272, which was introduced in the Senate by Robert Dole of Kansas. However, I declined the request.

As the next eight hearings unfold, I will be asking questions on how this bill applies to the business community, private and parochial schools, and State and local governments. Initially, I am concerned about the unequal treatment in coverage between State and local governments and businesses, partnerships, and other entities.

I am unclear as to how H.R. 700 covers private and parochial schools. I am unsure as to whether H.R. 700 does truly restore the law to what it was prior to *Grove City College* v. *Bell,* or whether it goes beyond that. The pinpoint langage also concerns me. The breadth and meaning of the catchall phrase in the definition of program or activity also needs to be closely examined in these hearings.

I am hopefull these questions will be answered and, if not, that the Subcommittee on Civil and Constitutional Rights, the full Judiciary Committee, and the full House of Representatives as well, will be receptive to clarifying amendments. If not, I am afraid H.R. 700 will suffer the same fate as its predecessor, H.R. 5490.

Because of some obligations in Washington, I unfortunately will not be able to stay for this committee meeting since I have to be back in the Capitol by noon. However, I will be following quite avidly the testimony that is given. And I am hopeful the questions I have raised, questions I think need to be clarified before this bill is reported by the full committee to the House of Representatives, are answered.

If there are no answers forthcoming, I think that the failure to answer these legitimate concerns will doom H.R. 700 to failure. Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Sensenbrenner. And I believe it is not correct that the bill was defeated in the other body. It was filibustered, as I recall, and was not brought to a vote before adjournment of the 98th Congress.

Well, we are also honored to have up at the head table here a very distinguished member of the House Judiciary Committee, representing the 13th District of Michigan, from Detroit, Judge George Crockett. Judge Crockett, do you have a statement?

Mr. CROCKETT. Thank you, Mr. Chairman.

I share the views expressed by the chairman concerning the close relationship between the history of this great city of Philadelphia and the purposes that this committee seeks to achieve by holding this hearing here this morning. I think that it is unfortunate that we get off on a disputed subject that really should be, and has been, thrashed out in Washington before the Judiciary Committee and should not have been brought and offered as a part of the hearing on this occasion.

But I will let the matter rest there. I think a great deal of misinterpretation has been associated with the statement made by the two members of the U.S. Commission on Civil Rights, neither of whom intended to suggest that the recent enactment of civil rights legislation did not apply to all Americans who were victimized by the unequal application of our Federal statutes.

Fortunately, the overwhelming majority of Americans did not need the assistance of this new civil rights legislation. Therefore it is dramatically correct, technically correct, and historically correct that the new civil rights legislation was intended to apply primarily to those who had been victimized by their exclusion from the basic human and civil rights enjoyed by other Americans.

Thank you, Mr. Chairman.

Mr. EDWARDS. I thank the gentleman very much for that clarification. I think it is very clear that there are certain protected classes within the United States who need more than others the protection of the civil rights statutes, and that is generally understood, and there is no real problem with what two members of the Civil Rights Commission said.

I am also pleased that we have a very distinghished member of the Education and Labor Committee also here this morning from Lynn, NY, the 12th assembly district; I am sorry—from Chicago. The First District of Illinois, a member of the Education and Labor Commission, Mr. Charles Hayes. Congressman Hayes.

Mr. HAYES. Thank you, Mr. Chairman. I am aware of some redundancy in what can be said with reference to these hearings today. But I too want to make a brief statement to express that I, indeed, consider it fitting to be here today in this city of brotherly and sisterly love. As we begin our effort to restore full basic civil rights statutes to the intended purpose, to enactment of H.R. 700, Civil Rights Restoration Act of 1985.

The four statutes put at risk as a result of the *Grove City* decision, title IX of the Education amendments of 1972, section 540 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964. President John Kennedy best described the intent of these laws when he in reference to title VI said,

> Civil justice requires that public funds to which all taxpayers of all races contribute not to be spent in any fashion which encourages, subsidizes or results in racial discrimination.

Mr. Chairman, I am here today as a part of this committee's effort to see that civil justice is done. Civil justice requires that Federal money not be used to subsidize discrimination on account of gender, age, race, national origin, or discipline. Civil justice dictates that an institution receiving Federal funds benefits from or practices any form of discrimination in any of its parts, civil justice, civil justice demands immediate enactment of House Resolution No. 700. Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Mr. Hayes. You know, in the House of Representatives, many positions are acquired through seniority, although we have votes every 2 years as to whether or not seniority shall rule. But there are several jobs, the most important jobs like the Speaker, the majority leader, that are not; that are votes free and open, and anybody can run.

Another very important job is the chairman of the Budget Committee. There is no seniority involved in the election of the chairman of that key fiscal committee. And I think that the people of Philadelphia should be very proud that one of their sons was elected by his colleagues in intense competition, with no benefits of seniority to hold this very, very important seat.

And these two committees represented here today, the Judiciary Committee and the Education and Labor Committee, are honored that Congressman Bill Gray, the chairman of the House Budget Committee, is here.

Bill, we welcome you. Would you please step up to the microphone?

STATEMENT OF HON. WILLIAM H. GRAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. **Gray**. Thank you very much, Mr. Chairman. To Chairman Edwards, distinguished gentleman from California, and to Mr. Crockett and to Mr. Hayes, members of the joint hearing of the Education and Labor Committee, and the Judiciary Subcommittee on Civil and Constitutional Rights. First, as the senior member of the Philadelphia delegation, let me welcome you to the "City of Brotherly Love" and "Sisterly Affection," as Congressman Hayes already recognizes.

We think we have got a great city here in Philadelphia, and Congressman Foglietta will tell you about all of the benefits of his district which you are in right now. But we extend to you a warm welcome, as you begin these very important hearings. You will carry a very important question (across the Nation) as we move into the closing years of this century; and that is where we will move as a country with regard to civil rights and the constitutional guarantees that protect civil rights. You will also make sure that we do not discriminate because of race, creed or color, sex, handicap or age.

So we welcome you, my colleagues, to our great city and I certainly wish you well as you begin this very important set of national hearings on H.R. 700. Mr. Chairman, and members of the committee, it is with great pleasure that I come before you today, to share my views with you concerning H.R. 700, the Civil Rights Restoration Act of 1985.

I would like to submit my complete statement for the record.

Mr. **Edwards**. Without objection.

Mr. **Gray**. However, I would like to just give a brief overview, if I might, Mr. Chairman, of my concern. This bill, which is designed to reaffirm Congress' intent that Federal financial assistance not be used to discriminate against any person on the basis of race, color, national origin, sex, disability or age, addresses a critical matter concerning all of us here today.

By restoring our primary civil rights statutes to the broad scope of coverage that existed prior to the Supreme Court's landmark decision in the *Grove City College* v. *Bell* case, this bill would eliminate the unduly restrictive interpretation of these laws imposed by the *Grove City* decision.

The basic question facing us today is whether or not Federal funds should be used to fund programs or activities which are discriminatory in nature.

Mr. Chairman and members of the committee, the debate of this bill is not about Federal intrusion into operations of non-Federal public and private entities.

Rather, it is about not using Federal taxpayers' monies to support discrimination. The Civil Rights Restoration Act of 1985 is neither a ground breaking piece of legislation nor a revolutionary idea. The bill merely returns to minorities, women, disabled, and elderly Americans the legal rights and remedies they had prior to the court's decision.

Discrimination, be it based on race, sex, national origin, age or disability, has no place in our society. If it was not made clear to the Supreme Court, what Congress intended when these civil rights statutes were enacted, it is imperative to make it clear now.

Immediate passage of H.R. 700 in the House of Representatives is necessary in order to reaffirm the civil rights guaranteed in 1964 by the Congress of the United States. I applaud you, Mr. Chairman, and your subcommittee and also the full committee on Education and Labor for these hearings. And I support you in the effort to reaffirm that this country will not allow Federal moneys to underwrite discrimination in any form, shape, or behavior.

Again, welcome to Philadelphia and to this great city of ours. Thank you very much.

Mr. **Edwards**. Thank you very much, Mr. Gray, for a very elloquent statement.

[Prepared statement of Hon. William H. Gray follows:]

PREPARED STATEMENT OF HON. WILLIAM H. GRAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman and members of the committee, it is with great pleasure that I come before you today, to share my views with you concerning H.R. 700, the Civil Rights Restoration Act of 1985.

This bill, which is designed to reaffirm Congress' intent that Federal financial assitance not be used to discriminate against any person on the basis of race, color, national origin, sex, disability or age, addresses a critical matter concerning all of us here today.

By restoring our primary rights statutes to the broad scope of coverage that existed prior to the Supreme Court's landmark decision in the *Grove City College* v. *Bell* case, this bill would eliminate the unduly restrictive interpretation of these laws imposed by the Grove City decision.

The basic question facing us today is whether or not Federal funds should be used to fund programs or activities which are discriminatory in nature.

This issue was initially addressed by President Kennedy with the adoption of Title VI of the 1964 Civil Rightrs Act. At that time he stated that "simple justice requires that public funds to which all taxpayers contributed not be spent in any fashion which encourages, entrenches, subsidizes or results in discrimination."

Unfortunately, the Supreme Court's decision in the *Grove City* case challenges that basic principle of justice. By narrowing the Civil Rights Act Title IX Prohibition Against Sex Discrinaton in Education, the Grove City decision essentially permits eductional insitutions receiving Federal funds to discriminate.

Failure to correct the Supreme Court's narrow decision in the *Grove City* case threatens far more than just Title IX. However, it must be remembered that virtually all Civil Rights protections are patterned on the Civil Rights Act of 1964. Current laws outlawing discrimination based on race, handicap, and age are also in jeopardy of being narrowly applied.

Indeed, that one court ruling could effectively set history back twenty years!

Failure by the Congress to maintain the broad coverage that President Kennedy envisioned, and which the Civil Rights Act of 1964 established, would erode the progress which we have made in protecting the rights of minorities, women, handicapped and senior citizens.

The Supreme Court's decision should not be altogether surprising, however. The *Grove City* decision is directly reflective of the policies of the Reagan administration.

There has been a steady retrogression in the civil rights arena for the past four years. This is evidenced by the administration waging war on affirmative action programs responsible for minority breakthroughs in education and in employment.

With unprecedented speed and dedication, this administration has effectively sacked, reduced and ignored a wide assortment of civil rights laws and practices that even previous republican administrations saw fit to leave undisturbed.

And it is ironic when you think that just twenty years ago, black taxpayers had to use separate restroom facilities in many buildings which we constructed with Federal funds.

In fact, prior to the enactment of title VI, Federal funds were used to build and maintain segregated schools, airports, hospitals, and housing programs.

With the enactment of title VI, however, the use of Federal funds for segregated facilities was ended. All subsequent civil rights laws preventing discrimination by recipients of Federal monies, including title IX, were patterned after title VI of the Civil Rights Act.

It is imperative that we not let this administration turn back the hands of time.

Mr. Chairman and members of the committee, the debate over this bill is not about Federal intrusion into the operators of non-Federal public and private entities.

Rather, it is about not using Federal taxpayers' monies to support discrimination.

The Civil Rights Restoration Act of 1985 is neither a ground breaking piece of legislation nor a revolutionary idea. The bill merely returns to minorities, women, disabled and elderly Americans the legal rights and remedies they had prior to the Court's decision.

Discrimination, be it based on race, sex, national origin, age or disability, has no place in our society. If it was not made clear to the Supreme Court what Congress intended when these civil rights statutes were enacted, it is imperative to make it clear now.

Immediate passage of H.R. 700 in the House of Representatives is necessary in order to reaffirm the civil rights guaranteed in 1964.

Thank you very much.

We are also honored, as Chairman Gray pointed out, to have with us this morning the Congressman who, with great distinction, represents this particular area where we are being so hospitably welcomed. Congressman Tom Foglietta of Philadelphia represents the First Congressional District here. He is a valued Member of Congress, respected by all of his colleagues and a very important member of a key committee, the Armed Services Committee.

Mr. Foglietta, we welcome you.

STATEMENT OF HON. THOMAS M. FOGLIETTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. **Foglietta**. Thank you, Mr. Chairman, Mr. Edwards, Judge Crockett, Mr. Hayes. And for the record, members of the Education and Labor Committee and members of the Subcommittee on Civil and Constitutional Rights of the Judiciary Committee, I welcome you to the district that I represent, the First Congressional District of Pennsylvania, and the city of Philadelphia.

It has been described as the "City of Brotherly Love and Sisterly Affection." The city of Philadelphia, especially in this area, which was the original city, was, as you know, the site of the First Continental Congress, the Second Continental Congress, where the original Constitution after the Bill of Rights had been accepted, was then adopted. The Constitution of the United State of America was written right here.

And this also served as the capital of the United States of America in those days. Wouldn't it be wonderful if we could have this as the capital again. And I would be representing the district in the

United States of America which is the capital of our great Nation. May I suggest, subsequent, if you do have the opportunity to walk around this area through these hallowed streets and byways and alleys, you can almost feel the spirit of Jefferson, of Washington, of Franklin in the area because, as you look through the buildings which have been restored to their original beauty, you can see the village.

You can see the coblestone streets. And you can go into buildings like our Independence Hall and read some of the original manuscripts which were apart of our history of this great Nation. I suggest that very strongly to each and every one of you if you have that opportunity, but let me say this: That my view of the Supreme Court's *Grove City College* v. *Bell* decision, and my views on civil rights generally are well known to you.

I cosponsored and voted for the Civil Rights Act of 1984 last year's effort to undo the damage done to the Nation's civil rights statutes by the *Grove City* decision. This year, I am proud to say I am a cosponsor of H.R. 700, the Civil Rights Restoration Act. I want to pledge my assistance to this committee's efforts to have H.R. 70 enacted into law this session.

I do want to say, however, I think it is most appropriate for this panel to be meeting here, the site of the birth of the U.S. Constitution. The strength of our Constitution is its procedural guarantees. The rights of speech and assembly, the rights of the accused, and the rights of due process of the 5th and 14th amendments.

The challenge which confronts us in the wake of the *Grove City College* decision is a procedural one. It is one thing to profess in statute belief in civil rights and freedom from discrimination. It is quite another to guarantee that we as a nation live up to our high standards. The Supreme Court in its *Grove City College* decision threatens to take away, for all practical purposes, the Federal Government's tools, procedures, if you will, for ensuring that our promises as a nation on civil rights are carried through. This is why I believe that H.R. 700 is so very, very important to each and every one of us.

Again, I welcome you to the city of Philadelphia, to the First Congressional District, and I thank you very much for your time.

Mr. EDWARDS. Thank you very much for a very splendid statement. You know those of us who are holding this hearing—have come from California, Wisconsin, Illinois, and Michigan to Philadelphia and we are here because this is such an important issue. This *Grove City* decision of the Supreme Court strikes at the heart of practically every civil rights law we have.

That is why we came to Philadelphia first. It is a constitutional matter, and it is a matter of equity. It is a subject that has not received enough attention from the American people. Their rights are threatened. Their rights have been taken away, and this bill would restore those rights. That is why we are going to every part of the country to awaken the people to this great matter. So your hospitality and attention this morning is greatly appreciated by us. Thank you.

Mr. FOGLIETTA. Thank you very much, gentlemen. You could not have selected a better place to hold this hearing.

Mr. **Edwards.** Now, we have several panels today of great witnesses that we are looking forward to hearing. The first panel can come to the witness table, Mr. Jack Zucker, acting legislative director of the Gray Panthers in Philadelphia—Mr. Zucker, we are glad to have you here. Rev. James Allen is chairman of the Philadelphia Human Relations Commission. We will have a third member of the panel a little later, but we have gotten off to a fast start, and we want to move right along.

We do have quite a number of witnesses. I believe staff has suggested and asked that the witnesses do everything they can to summarize their statements. All the statements will be made a part of the permanent record.

STATEMENTS OF JACK ZUCKER, ACTING LEGISLATIVE DIRECTOR, GRAY PANTHERS; AND REV. JAMES ALLEN, CHAIRMAN, PHILADELPHIA HUMAN RELATIONS COMMISSION, PHILADELPHIA, PA

Mr. **Zucker.** Thank you, Mr. Chairman. Staff told me the old would be last instead of being first. However I have no objection to it.

Mr. Chairman, I do ask permission to have my statement placed into the record since I am going to abide to your rule of speaking 5 or 10 minutes instead of spending the usual 20 or 30 minutes.

Mr. **Edwards.** Without objection.

Mr. **Zucker.** I want to tell you the Gray Panthers want to first thank you and members of the committee for inviting us to testify on H.R. 700. I think we come to this committee as experts in the field of civil rights because my generation is not new to this field. Since we engaged in every campaign from the 1930's to today to convince this Nation to take the steps that are necessary to grant civil rights for all Americans, not just a few, we, of course, reject and oppose any concept that says that the Federal Government does not have the responsibility to enforce full rights to all Americans, not just the rich and powerful.

I want to remind you, Mr. Chairman, members of the committee, that it was my generation that organized unions in the mass production industries and won a degree of economic democracy in the workplace. It was my generation who began to take the first steps to reestablish the right of sufferage in the South for blacks and poor whites in fighting against the poll tax.

It was my generation that helped eradicate to some extent the legal and extralegal lynching that went on in the South through my years of development and growth, lynchings that included the lynching of Americans who came back home in the uniform of the Armed Forces.

I think these are some of the things we have to fight for in order to begin to reestablish some of the civil rights protection. It was my generation that helped eliminate discrimination because of race, color, or sex in the Armed Forces. We were the first to work to establish a fair employment practices committee in this Nation.

It was my generation that together with the other Americans organized and fought for civil rights legislation in the 1960's. And I might say that our experience has been that the President and the

Congress needed popular support and popular organization to achieve, and protect civil rights in this country. We see the Supreme Court *Grove City College* decision as a step backward, a weakening of Government commitment to the people of the Nation.

Industry has demonstrated in the past, and I think is demonstrating today that industry, academia, and other institutions need Government encouragement and enforcement if civil right is to have any meaning in our Nation. Throughout our lives, we have suffered another type of discrimination, Mr. Chairman. We call it ageism today.

Economic discrimination continues to dog our lives as we are reaching our sixties and seventies and eighties. In our youth, good paying jobs were not available to us. We were told we were too young. We lacked experience. We were irresponsible. We were not mature. Then we reached middle age in the forties and fifties. We were too expensive.

Those of us in industry and professions, middle management were told by management that they could not afford our high salaries and increased costs and benefits. Thousands of us were laid off or fired, and we were replaced by younger emloyees who accepted lower wages. When we reached our sixties and seventies, we faced mandatory retirement in spite of the fact that we were and are competent to do the work. And we need the income we were losing.

To this date, our Nation has no program to solve the elderly search for meaningful jobs. There is no national campaign to induce industry to develop job sharing programs. The national policy to date has been to discard the elderly as if they were old broken down abandoned automobiles. Let me tell you, Mr. Chairman, I am a member of the mayors advisory commission on aging.

In spite of the support we are getting both from organized labor and from the chamber of commerce, a very small number of the companies in this city participate in the excellent work this commission is trying to develop and do in order to produce jobs for the aged. And in most cases the jobs we do get for our people are half the rate they used to get, and are either minimum rates or a little above the minimum rates.

Certainly, you can see, even in the work that is being done, you can see how discrimination against older people who are capable and competent to do the work is going on. Therefore, we agree that clarification of the 1975 Age Discrimination Act as a result of the Supreme Court decision is important and we commend this committee for its prompt consideration of it.

It was another act in the evolving and more complete comprehensive civil rights program for those of us who now face discriminatory practices.

Thank you, Mr. Chairman.

Mr. **Edwards**. Thank you very much, Mr. Zucker, for your very impressive testimony.

[Prepared statement of Jack Zucker follows:]

PREPARED STATEMENT OF JACK S. ZUCKER, ACTING LEGISLATIVE REPRESENTATIVE, GRAY PANTHERS

Mr. Chairman, and Members of the Committee, thank you for inviting me to testify on H.R. 700. The bill responds to the Supreme Court decisions of February 28, 1984, in *Grove City College* v. *Bell.* The Gray Panthers strongly support this legislation.

The Supreme Court's decision defined "program or activity" in Title IX of the Education Amendments of 1972. That phrase also appears in the Age Discrimination Act of 1975. Without this bill subsequent judicial decisions would give the Age Discrimination Act a narrower scope and purpose than it had had before *Grove City.* Therefore, we applaud the Congress' recognition that each of the civil right statutes that was based on Title VI, and that uses the phrase "program or activity," must be amended to give each a proper interpretation.

In recent years we have become increasingly sensitive to the need to eliminate descrimination based on unfair stereotypes based on a person's age. The Age Discrimination Act of 1975, which prohibits discrimination on account of age carried out by recipients of federal-financial assistance, was a major response by Congress to this need.

The Secretary of the Department of Health and Human Services (HHS) is required to approve each agency's proposed ADA regulations before they become final; the agency regulation must "be consistent" with the government-wide regulations, 43 U.S.C. § 6103(a)(4).

The first agency-specific regulations to appear were those proposed by HHS itself on September 24, 1979, 44 Fed. Reg. 55101. At this point, however, the regulation process came to a screeching halt. The Secretary of HHS failed to act on HHS's proposed regulation until December 28, 1982, after receiving a notice of intent to litigate by several senior citizens' organizations over the Department's failure to promulgate final regulations under the Act. Since then the Secretary of HHS has been dragging her feet on regulations proposed by other federal departments and agencies and submitted to the Secretary for her approval. The Secretary has grudgingly approved these regulations but only partially and only after a lawsuit was filed to make her act.

Only 11 federal agencies have undertaken to inform their recipients of ADA obligations. Seventeen agencies reported no activity in this area during the past year. Eight agencies have reported no such activity at any time since passage of the ADA.

Only ten agencies reported that they had taken steps or continued programs to train staff on enforcement of the ADA in 1983. Agencies which engage in no staff training include the Departments of Agriculture, Commerce, Defense, Education, Justice and Labor. Thus, much work remains to be done before the promise of a discrimination-free environment for our older citizens becomes a reality.

If it has not been clear before, it will be clear with this legislation, that the remedy for a violation of the Age Discrimination Act involves the same broad coverage as the remedy for violation of similar civil rights statutes governing federal financial assistance. A federally-funded adult education class which restricts students to those under 30 will be answerable for that practice whether or not the federal funds are traced to that particular class. A health center which effectively excludes older persons from its services will be responsible for its policy regardless of which equipment has been purchased with federal funds.

My generation is not new to civil rights and the campaign that finally convinced our nation to take timid steps to advance civil rights for all Americans.

It was my generation that organized the unions in the mass production industries and won a degree of economic democracy in the work place.

It was my generation that began the campiagn and won the elimination of the poll tax as a first step to reestablish the right to suffrage for the blacks and the white poor in the South.

It was my generation that helped to eliminate discrimination because of race, color or sex in the armed forces.

We were the first to establish a national Fair Employment Practices Committee.

It was my generation that together with other Americans organized and fought for Civil Rights legislation in the 1960's.

Throughout our lives, we have suffered another type of discrimination, Ageism. To this day ageism is a part of the cancer that is a blot on the American social scene.

Ageist economic discrimination continuously dogged our lives as we matured and reached our 60's and 70's.

In our youth good paying jobs were not available to us. We were told that we lacked experience, we were irresponsible, we were not mature.

When we reached middle age in our 40's and 50's—we were too expensive. Those of us in industry professions, middle management we're told by our employers that they could not affort our high salaries and the increasing costs of benefits. Thousands of us were laid off or fired and we were replaced by younger employees who accepted lower wages.

When we reached our 60's and 70's we faced mandatory retirement in spite of the fact that we were competent to do the work and we needed the income we were losing.

To this date, our nation has no program to solve the elderly search for meaningful jobs. There is no national training program for the elderly. There is no national campaign to induce industry to develop job sharing programs. The national policy to date has been to discard the elderly as if they were old broken-down abandoned automobiles.

We repeat, clarification is very important to the remedial purposes of the Age Discrimination Act. We commend this Committee for its prompt consideration of it. It is another step in evolving a more completer and comprehensive civil rights program for all those who now face discriminatory practices.

Mr. EDWARDS. Our next witness is Rev. James Allen. Reverend Allen is chairman of the Phildelphia Human Relations Commission in Philadelphia. Welcome, Reverend Allen.

Reverend ALLEN. Thank you, Mr. Chairman and members of the panel. Let me express deep appreciation on behalf of the 9 commissioners and 46 staff persons of the Philadelphia Commission on Human Relations for the opportunity to appear before you at this hour. We are a chartered, mandated agency of the city of Philadelphia, charged with the responsibility of monitoring and enforcing the civil rights laws of the city in its relationship to race, national origin, sex, sexual orientation, age, and handicap. With being charged with that responsibiity, we believe that it is significant that there be strong Federal statutes to undergird those State and local statutes prohibiting discrimination.

History travels in a strange cycle. More than 20 years ago, many American citizens were put in the awkward predicament of experiencing taxation without equal representation. Their tax dollars were used in such a manner as to create a climate which forced them to pay for their own enslavement.

Federal tax dollars supported individuals and institutions who were inaccessible and unavailable to minority citizens, women, those who had certain handicaps or were considered to be too old. The civil rights legislation of the sixties created a process by which such inequities began to be addressed.

After this historic action by the Congress many citizens who had no hope of ever securing a certain type of education, who always knew that certain jobs were not, and perhaps never would be available to them, began to believe they could ascend to the top. Many have done so as a direct result of the Federal law prohibiting the discriminatory use of Federal dollars, but one of the major things that has happened as a result of the passage of the civil rights bill is an elimination of what I call a general attitude of fear—a fear on the part of many citizens who, prior to the passage of such laws, had the kind of fear that prevented them not only from attaining certain levels, but even seeking to attain.

More than a decade after the passage of the civil rights law there are discussions about whether it has had any positive impact. We only need to look, for example, to Selma, AL, on yesterday, to see a demonstrated answer to that question. The years following the passage of the civil rights law saw individuals, agencies and institutions committed to the notion of obeying the law, even if they did not like the law. They knew there was a Federal commitment to enforcement. But today, there is a different beat of the Federal drum.

There appears to be not only a lack of commitment on the part of the administration to the enforcement process, but there appears to be a determination to turn back the calendar.

It is significantly important that such hearings as you are conducting should go forward. The racism which gave birth to the need for a civil rights bill in the first instance has not died. The potential for reversal is still with us. In some cases such racism is wrapped in the cloak of linguistic niceties, but the reality is the same. There must be a new commitment on the part of the Federal Government to the notion that tax dollars must not be used to finance discrimination in any shape, form, or fashion.

Those of us who are the products of a separate but equal system know that there is no such system in reality. It is simply a system which demands that the weak and disinherited remain weak and disinherited, while at the same time helping to finance their own enslavement.

And so, ladies and gentlemen, it is with a great deal of enthusiasm that I endorse and support H.R. 700, and urge that you would go forward with the passage and implementation of such a bill.

Thank you.

Mr. EDWARDS. Thank you very much, Reverend Allen.

As I pointed out earlier, we have an important member of the House Education and Labor Committee here representing that committee, Mr. Charles Hayes of Chicago.

I yield to you, Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

We have been benefited by the statement from two Congressmen as well as these two fine witnesses who are supportive of our positions on this subcommittee. I just hope that you would be able to make contact with some Members in the area here who may not be as sold on the passage of H.R. 700 as we are here. In fact, I think there is probably some reticence on the part of the administration, as you well know, to push for the passage of this legislation.

I can see maybe some change in attitudes developing. But they still don't have a commitment to enforcement of the civil rights statutes.

Our responsibility, as Congressmen, in channeling the flow of justice would be easy. It comes to mind that one ranking member of the Committee on Education and Labor, ranking Republican member—I, for one, don't exactly know what kind of commitment he has in support of this legislation.

I am somewhat concerned about the other body who make up the Congress, because as I think my colleague said, they were the ones who filibustered the issue before. I don't know if we are confronted with that kind of situation now. But I think the feeling of people, a good many of them, is just right to pass the law to protect the civil rights against what we made in the sixties, and before that.

But the dangers still lie ahead that it may not happen unless there is a push on the part of people like you. And I do hope you keep up the kind of moving forward in this direction that you have displayed here before our committee.

Thank you very much. I don't have any questions.

Mr. **Edwards**. Thank you, Mr. Hayes.

The gentleman from Michigan, Judge Crockett.

Mr. **Crockett**. Thank you very much, Mr. Chairman.

Mr. Zucker, I really don't have any questions for you, but I want you to know that I thoroughly identify with your comments, not the least reason because you and I both are of that same generation that you are talking about.

Mr. **Zucker**. You participated in many of the campaigns that I did, Mr. Crockett.

Mr. **Crockett**. I completed one vocation, I suppose you would call it, Mr. Chairman, as judge of the criminal court in Detroit. Then I came out of retirement to come to Congress.

I share your thinking, however, that there still remains a large body of discrimination against senior citizens. We still have a continuing obligation to do something about that.

With respect to your statement, Reverend Allen, I thought it was significant that you call our attention to Selma and to the march that was featured on TV yesterday with respect to the return to Selma. In that capacity, it strikes me that one of the functions of legislation is to educate. And it is because of legislation like House Resolution 700 that we have come as far as we have. And that progress, I think, is typified by the statement that you and I heard the mayor of Selma make on TV yesterday.

Now, he is the same gentleman who was mayor at the time of the brutal treatment visited upon the civil rights workers 20 years ago. But because of the experience that he and millions of others have undergone as a result of civil rights legislation like this, he was big enough to say, "We were wrong 20 years ago when we opposed the civil rights revolution."

Thanks again, both of you, for the tremendous help you have given me and the committee in considering this legislation.

Reverend **Allen**. If I might make this observation, sir, the march in Selma yesterday was very significant to me, even though I could not be there yesterday. I was there 20 years ago. And I saw firsthand brutality that was inflicted at that time. And I know the difference that has occurred as a result of passage of the civil rights laws.

Having grown up in the South and, at that time, lived in the South, and having lived in the Midwest as well as here in the East, I have seen the difference such legislation has made.

Mr. **Edwards**. I, too, want to thank the two witnesses. And I am glad Reverend Allen brought up the matter of Selma and the reenactment of the march of 20 years ago, because I think we all ought to remember, and I hope the message goes out very clearly across the country, that unless *Grove City* is reversed—and that is all we are doing; we are not enlarging the law in any way. H.R. 700 does not enlarge the law in any way, and that is a false statement that is made over and over again—much of the sacrifices, many of the sacrifices at Selma and of the civil rights movement generally will have been in vain, because *Grove City* strikes at the heart of the civil rights laws.

Alabama has changed, yes; but unless *Grove City* is reversed, people who want jobs in Alabama and who might be minorities or who might be older, or who might be handicapped, might not get them. Because the scope of coverage is now so narrow, the discrimination has to take place just where the Federal assistance actually flows, that is to say the particular department, and agency of the Government.

The city of Selma—I am not trying to pick it out, but we are talking about Selma—might be discriminating all over the place. Other agencies might be discriminating, but they would have to pinpoint the flow of Federal assistance before reaching that the discrimination.

I want to make it very clear that this is a very important principle that *Grove City* established and one that must be reversed, or discrimination will again occur and these laws will not have the impact that they have had.

Older people, Mr. Zucker, will be able to be discriminated against when perhaps they want to go to college—a few years older, not seniors but people who are older than the average college students, who want to go to college. Yet, they can be discriminated against on account of their age as long as the Federal money involved is not in that particular department where they have applied. So it has so narrowed the interpretation of the civil rights laws that we are going to be in real trouble.

I wish I could say we are going to have help from the White House. We have sent a message through to President Reagan and his people that this is a bill for all Americans—not for Democrats, not for Republicans, but for everybody; and that what they did in 1984 won't fly this time. The filibuster was something that we should be ashamed of in our country. It did great damage to the civil rights movement and to the posture of Americans everywhere. We don't want that this time.

And I think we ought to point out that much as we admire the majority leader in the Senate, in the other body, Mr. Dole, Senator Dole, who is a very fine leader—but we disagree strongly with the bill that he has introduced. All it does is reverse *Grove City* insofar as discrimination in education is concerned.

But Federal assistance flows to other than education programs and the potintial for discrimination on health transportation and other areas exists and must be addressed because of the *Grove City* ruling. That is the chief difference between the bill that the White House is sponsoring, which is Senator Dole's bill, H.R. 700.

So thank you very, very much.

I am honored that Congressman Martinez, my colleague from California, is here, a very important member of the Education and Labor Committee.

Welcome. Do you have a statement?

Mr. MARTINEZ. No, thank you, Mr. Chairman.

Mr. EDWARDS. This points out how important this issue is. I come from northern California; Mr. Martinez comes from southern California. I am from San Jose. It is a long way from San Jose, too. To have people from Wisconsin, Illinois coming to this great city and enjoying the hospitality, shows the importance of this legislation.

Mr. ZUCKER. We hope all roads will lead to the Liberty Bell.

Mr. EDWARDS. Thank you very much. You have been great witnesses.

We will now have a very interesting panel. I believe we are going to have the pleasure of having controversy, which is always interesting and stimulating, because we are going to have the people on the other side. We always do in these hearings, you know. There always are two sides.

Our witnesses are going to be: Mr. Charles MacKenzie, president of Grove City College, Grove City, PA; Ms. Rhoda Schulzinger, staff director of the Full Access and Rights to Education in New York City, NY; Ms. Hilda Gore, director of admissions, Samuel Gompers Vocational Education and Technical High School in Bronx, NY; and Ms. Marilyn Reeves, junior, Samuel Gompers Vocational Educational and Technical High School, Bronx, NY.

Without objection, all the statements of the panel will be made a part of the record.

The first witness to testify is Ms. Rhoda Schulzinger, staff director of the organization called Full Access and Rights to Education coalition, in New York, NY.

We welcome all of you. You may proceed.

STATEMENTS OF SHELDON HACKNEY, PRESIDENT, UNIVERSITY OF PENNSYLVANIA, PHILADELPHIA, PA; CHARLES S. MacKENZIE, PRESIDENT, GROVE CITY COLLEGE, GROVE CITY, PA; RHODA SCHULZINGER, STAFF DIRECTOR, FULL ACCESS RIGHTS TO EDUCATION, NEW YORK, NY; HILDA GORE, DIRECTOR OF ADMISSIONS, SAMUEL GOMPERS VOCATIONAL EDUCATIONAL AND TECHNICAL HIGH SCHOOL, BRONX, NY; AND MARILYN REEVES, JUNIOR, SAMUEL GOMPERS VOCATIONAL EDUCATIONAL AND TECHNICAL HIGH SCHOOL, BRONX, NY

Ms. **Schulzinger**. Mr. Chairman, could we have Marilyn Reeves go first, who is the student?

Mr. **Edwards**. Yes, of course.

Ms. **Schulzinger**. Thank you.

Mr. **Edwards**. Our first witness, therefore, will be Ms. Marilyn Reeves, junior, Samuel Gompers Vocational Educational and Technical High School, from the Bronx.

Miss **Reeves**. My name is Marilyn Reeves. I am a junior, majoring in technical electronics, at Samuel Gompers Vocational-Technical High School in the South Bronx in New York City.

I have lived with my grandmother since I was 2 months old. My grandmother raised me and took care of me the best she could. She is now 72 years old. She prays that I will get the kind of education that will lead me to a good job.

My grandmother always had too many physical disabilities to work, so the only money we had was from public assistance and SSI. Life was difficult for us financially. My grandmother always worried about bills. I knew I had to get a good job and make enough money to support a family.

Even as a kid, I was always interested in electronics. I liked to take things apart and see how they worked. I applied to Gompers Vocational-Technical High School because I knew they had a technical electronics program.

My grandmother was a little afraid of my studying electronics. She thought I was going to get shocked by electricity. But, recently, she heard a preacher on the radio say, "Make sure your children get some training in the fields of computers or electronics so they can get a good job." She is happy now because she feels that electronics will be rewarding to me in the future.

When I entered Gompers, I was 1 of 2 girls in a shop class of 23 boys. I was never afraid to compete with the boys in technical electronics. In all of my courses, I did as well or even better than the boys. I had a 96 average in pretech.

I love studying technical electronics. After graduation, I plan to attend a technical college and study to be an electronics technician. In addition to being dedicated to this field, I know that the pay will be good and that, unlike the other women in my family, I will make a living wage.

Without title IX, I know I could never have gone to Gompers, because in New York City only boys were permitted to learn technical electronics. I feel lucky that the doors of the schools opened for women just as I came along.

Being one of a few girls in a school full of boys is not easy. These schools, like Gompers, were built for boys and maintained for boys. It is a continuing struggle for girls to be accepted as equals. I feel like having title IX is like having an army behind me that supports me in my rights as a girl who wants a place in a boys' world. It supports me in my fight to find a woman's place in the world of science and technology.

Thank you.

Mr. **Edwards**. Thank you very much for really wonderful testimony, Miss Reeves. We are very glad to have you here.

Our next witness is Ms. Hilda Gore, director of admissions, Samuel Gompers Vocational Educational and Technical High School.

Ms. Gore.

Ms. **Gore**. My name is Hilda Gore, and I have been for the past 18 years a teacher, and more recently an admissions director, for a New York City public school called Samuel Gompers Vocational-Technical High School. It is located in the South Bronx.

For the past 42 years, and in the almost two decades since I have been there, Gompers has been an all male trade and technical school. When I began there in 1967, there were 6 women teachers in a staff of 80. The school offers courses in technical electronics—a preengineering course, computer programming and computer maintenance, digital electronics, bio-medical technology, and electrical trades.

Chiseled in stone over the door of the front entrance is a motto by Benjamin Franklin. It says, "He who hath a trade hath an estate." Until 1978, only "hes" earned a livelihood through studying at Gompers. "Shes" were not allowed. The door was closed to girls in an area of the Nation where livelihoods for women were badly needed.

In 1978, there were 4 girls in a school of 1,000 boys studying nontraditional courses at Gompers. Today, in 1985, there are over 500 young women in a school of 1,000 boys. I would like to tell you the history of these numbers.

Without title IX and the provisions for enforcement, the future of girls as to whether they become low-paid clerks or well-paid technicians is left to the individual whims of school administrators. When the first six young women enrolled at Gompers in 1977, the principal at that time sent them home that first day of school with the admonition: "You'd better transfer to another school. I can't guarantee your safety here." They left and never came back. The following year, another principal was appointed and he was amenable to recruiting women.

I was appointed to admissions and engaged in a recruiting drive for young girls. As I visited junior high schools, I found girls and many of their mothers listening to me, nodding their heads, and even cheering sometimes while I talked about women's rights to jobs in trades and technologies, and how for the first time in history women were to be allowed to study courses which promised better pay and benefits than women had known before.

Although I was able to bring young women into the school, there was a struggle to retain them. We did not have proper bathroom or locker facilities for them. There was a lack of counseling and no sports program for females.

Until advocacy groups like Full Access and Rights to Education pressed the State to do a title IX compliance review of the high schools, we had had no recourse to the board of education to rectify conditions within the school to create equal facilities. It is with the enforcement of title IX that the city has become active in creating equal opportunity for girls in traditionally male trade schools and has corrected the unfair conditions at our school.

The Civil Rights Legislation Act of 1985 is necessary to carry on this activity. The female students at Gompers High School are, for the most part, second-generation welfare women. They are girls who have already shouldered the responsibility of helping to care for younger brothers and sisters. There are some girls without parents who live as emancipated minors supporting themselves while they attend high school.

Most of the girls tell stories of how they always knew, even as children, that they didn't want to do traditional women's work; that they liked to work with their hands. These girls, without title IX and its enforcement, would perhaps begin the third generation of welfare, prevented by discriminatory practices from following their natural vocations.

At Gompers Vocational-Technical High School, we presently have equal bathroom and locker facilities, coed sports teams, and special counseling and support programs for girls; in short, the things that are necessary to create retention of females in nontraditional courses. Our first female graduates are attending schools of engineering, technical schools, and are working as electricians.

Public education is playing a leading role, as it should, in trying to achieve justice, equality and economic independence for women. Tearing away the legal pillars of title IX would bring down the achievement of over 10 years of effort. It is the Federal law that compels the reluctant to honor America's ideals and opens the gates of education to over half the Nation's citizens.

Thank you.

Mr. **Edwards**. Thank you very much, Ms. Gore.

Our third witness will be Ms. Rhoda Schulzinger, who is staff director of Full Access Rights to Education in New York City.

Ms. **Schulzinger**. Good morning. Thank you, Mr. Chairman.

I direct the FARE coalition, which is a group of 30 organizations and individuals throughout New York City who are concerned with sex equity in education and employment training programs. I am very pleased to have the opportunity to speak with you today to urge your support for the Civil Rights Restoration Act of 1985.

At this time, I would like to request your permission to enter into the record a recent report which our group did on the extent to which sex segregation still exists in the New York City high schools.

Mr. **Edwards**. Without objection, it will be accepted for the files.

[The report follows:]

INCH BY INCH

A Report on Equal Opportunity for Young Women in New York City's Vocational High Schools

5
6
11
12
14
19
20

A Publication of the FULL ACCESS AND RIGHTS TO EDUCATION COALITION

November 1984

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The Full Access and Rights to Education Coalition is a membership organization established in 1979 to promote educational equity for young women in New York. The Coalition is administered and staffed by the Center for Public Advocacy Research, Inc. 12 West 37th St., New York, New York 10018, (212) 564-9220. Copies of this report may be obtained from the Center for $6.00 each.

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INCH BY INCH

A Report on Equal Opportunity for Young Women in New York City's Vocational High Schools

A Publication of the FULL ACCESS AND RIGHTS TO EDUCATION COALITION

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November 1984

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Rhoda Schulzinger
Lisa Syron

INTRODUCTION

If young people are to have the chance to freely pursue their occupational interests, the educational opportunities available to them must offer a wide spectrum of options for vocational preparation. In many American communities, vocational education is so sex-stereotyped and segregated that it places severe constraints on the vocational choices of students. The combination of official school policies and procedures and daily practices of school personnel ensure that most young people are channeled into programs providing training in occupations considered "women's work" or "men's work".*

For young women, sex bias in vocational education not only violates standards of fairness, but also reduces the likelihood of achieving economic security and self-sufficiency. The occupations young women are encouraged to pursue lead to jobs which offer little status and money and few opportunities for advancement. Since women are increasingly likely to spend a part of their lives as single heads of households, this vocational tracking directly contributes to the poverty experienced by so many single women and their families.

The situation is similar in New York City. To help organize change, an advocacy group was formed in 1979 to promote educational equality for young women — the Full Access and Rights to Education (FARE) Coalition. FARE is a membership group associated with the Center for Public Advocacy Research, a non-profit organization that conducts research and advocacy to promote the economic and social needs of women and children.

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*To encourage young people to follow their personal vocational interests, regardless of traditional sex stereotypes, is not to invalidate choices made by many young women and men who want to pursue lines of work traditional for their sex.

In 1982, FARE conducted an investigation of New York City's vocational/technical high schools to determine how well they were serving the needs of young women. FARE found that the nature and extent of the problems for young women in the vocational/technical high schools were the product of a pervasive sex bias in almost every aspect of school life. Indeed the educational opportunities for young women and men were so dissimilar that vocational education functioned as a dual system in which the training offered to young women was markedly inferior to that offered to young men. The report on this investigation and its findings are found in Their "Proper" Place: A Report on Sex Discrimination in New York City's Vocational High Schools.*

Their "Proper" Place documented the severity of sex segregation within both the vocational high schools and specific vocational programs:

- Most of the female vocational high school students were concentrated in five of the city's 21 vocational/technical high schools.
- In these five high schools, the programs prepared young women for traditionally "female" occupations such as cosmetology, health assisting and secretarial skills which lead to careers in which it is difficult for women to advance and do well financially.
- In 1981-82, females comprised over 98% of vocational high school students taking cosmetology classes, 94% of those in food occupations and 91% in textile production and dressmaking. At the same time, young women were less than 3% of the students in aviation operations and less than 1% of the students in both automotive mechanics and plumbing and pipefitting.**

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*For copies, contact the FARE Coalition at the Center for Public Advocacy Research, 12 West 37th Street, New York, New York 10018, (212) 564-9220.

**Data from the Office of Occupational and Career Education (which now is part of the Office of Funded Programs), New York City Board of Education.

Their "Proper" Place also offered evidence of the institutional policies, procedures and personnel practices which constituted a system of sex discrimination which was so much a part of daily routine that it escaped notice by all but the very vigilant. For example:

- o Guidance counselors directed female students to the "girls schools" either by failing to present information about the "boys schools" or by discouraging young women who were interested.
- o Recruitment practices and materials used at the "boys schools" were only geared to prospective male students.
- o School facilities at the "boys schools" were inadequate for the needs of female students.
- o As female students began to enter the "boys schools", the schools failed to establish policies or procedures to ease the transition for young women into an all-male environment.

These findings were corroborated by a separate investigation conducted by the New York State Education Department.* Under authority granted to it by federal vocational education regulations and Title IX of the Education Amendments of 1972**, the State Education Department investigated possible sex discrimination in 11 New York City vocational/technical high schools. They concluded that school programs and facilities were established and maintained for only one sex and that the Board of Education had not taken adequate actions to eliminate sex discrimination. As a result, the New York City Board of Education was required to submit a plan and to proceed with changes to remedy the violations documented by the State Education Department.***

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*The Final Letter of Findings (November 14, 1983) was issued by the New York State Education Department, Occupational Education Civil Rights Compliance Unit.

**The federal law which prohibits discrimination on the basis of sex in educational programs receiving federal financial assistance.

***The plan was submitted in February 1984 and awaits final approval by the State Education Department. After reviewing it, State Education Department officials made a number of recommendations to modify the plan and began negotiations with representatives of the Board of Education in the summer of 1984 to finalize it. The Board of Education expects to submit a revised plan in December 1984.

Inch by Inch presents the findings of a subsequent investigation of New York City's vocational high schools conducted two years after the initial study reported in Their "Proper" Place. FARE reviewed data on school and program enrollment and met with students, teachers and school administrators to determine what changes, if any, had occurred and to gauge their impact.* This report:

- documents the number of female students who have entered training programs which prepare students for occupations traditionally held by men**;
- reviews progress made during the last two years by the high schools and the Board of Education to recruit, admit and support female students in schools that have traditionally enrolled only young men;
- reports on the current experiences of female students; and
- suggests what to do to improve vocational opportunities for all young people -- especially to encourage more young women to pursue occupations that offer them a better future.

Clearly the sort of overhaul needed in New York City's vocational education system takes time. FARE found changes that seem promising. Some innovations are beginning to reduce -- inch by inch -- sex bias and discrimination in the vocational/technical high schools. But while Inch by Inch provides evidence of movement, it is not on the scale that is needed. For the most part, the system has moved much too slowly and as a result, many young women are denied opportunities to which they are entitled.

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*All quotations in this report are from interviews FARE conducted with students and school personnel in the spring and fall of 1984.

**Much of this report concerns issues that relate to problems faced by young men who want to enter fields considered traditionally female. However, since integrating more young men into predominantly female schools raises important questions about whether the curricula at the "girls schools" leads to a future of economic security and self-sufficiency, we will discuss these issues in a subsequent report.

We hope this report will help to spark activities that can hasten changes in New York City's vocational education system. All students should be encouraged to prepare for occupations on the basis of their interests and abilities rather than their gender.

CHAPTER ONE

A SMALL MEASURE OF SUCCESS

> The most important thing my school
> can do is to get more girls here.
> -Female Vocational/Technical
> Student

Sex discrimination and segregation in New York City's vocational/technical high schools are being challenged, although slowly. At a snail's pace more young women are entering schools or training programs which have historically served young men.

Schools with enrollments which are nearly all male or female continue to predominate, but there are indications of improvement. Twelve of the 21 vocational/technical high schools have traditionally served young men. FARE studied 10 of these* and found that the number of female students has increased from 521 in 1979-1980 to 1,220 in 1983-1984 representing a 134% increase over four years. Yet young women still represent only 7.6% of the total enrollment in the traditionally male vocational/technical high schools.**(See Table I)

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*Manhattan Vocational/Technical and Alexander Hamilton are slated for redesign and therefore are not accepting any new students. (FARE is monitoring the plans for this redesign.) Throughout this report data on the schools which have served young men will not include these two schools.

**Ralph McKee differs from the other predominantly male schools because it also offers cosmetology, a traditionally female program. In the past few years, a decrease in the number of girls enrolled in the cosmetology program has offset the increases which have occurred in the school's traditionally male programs. As a result, the overall school enrollment figures are misleading. Excluding the cosmetology program, the percentage of females enrolled increased from 6.0% in 1980-81 to 8.4% in 1983-84.

TABLE I*

SCHOOLWIDE PERCENTAGES OF MALES AND FEMALES ENROLLED IN SKILL PROGRAMS OFFERED BY NEW YORK CITY'S VOCATIONAL/TECHNICAL HIGH SCHOOLS 1979-80 AND 1983-84

School	Selected Skill Programs**	1979-1980 % of Total Enrollment Males	1979-1980 % of Total Enrollment Females	1983-1984 % of Total Enrollment Males	1983-1984 % of Total Enrollment Females
Alfred E. Smith	Technical Drafting/Pre-Engineering, Building Construction, Carpentry, Auto Trades	99.8	0.2	96.0	4.0
Automotive	Automobile Mechanics, Automotive Electrical Service, Auto Body Repair	99.9	0.1	99.4	0.6
Chelsea Vocational	Computer Servicing, Electronics, Electrical Installation, Cabinet Making	100.0	0	97.2	2.8
Aviation	Aviation Maintenance Technology	99.1	0.9	97.2	2.8
William E. Grady	Technical Electricity/Electronics, Computer Technology, Auto Mechanics, Electrical Trades	98.7	1.3	94.8	5.2
Manhattan Vocational/Technical	Technical Architectural Drafting, Mechanical Drafting, Carpentry, Machine Shop	97.4	2.6	96.9	3.1

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*These statistics, based on data from the Division of High Schools and the Office of Student Information Services, New York City Board of Education, refer to school-wide enrollments and do not indicate enrollment in the individual occupational programs or classes within schools. Enrollment figures for each year, 1979-1984, are presented in Appendix A.

**Source: Directory of the Public High Schools, New York City Board of Education, 1984-85.

TABLE I (continued)

School	Selected Skill Programs	1979-1980 % of Total Enrollment		1983-1984 % of Total Enrollment	
		Males	Females	Males	Females
Thomas Edison	Technical Electricity and Electronics, Computer Electro-Mechanical Technology, Business Equipment Repair, Machine Shop Practice	98.3	1.7	94.4	5.6
East New York	Aviation Maintenance, Electrical Installation, Electronics, Architectural Drafting	97.5	2.5	91.0	9.0
George Westinghouse	Computer Programming, Technical Electronics, Cabinetmaking, Dental Laboratory Processing Technology	93.9	6.1	82.1	17.9
Samuel Gompers	Technical Electronics, Electrical Installation, Business Machine Repair, Computer Data Processing	98.7	1.3	86.6	13.4
Alexander Hamilton	Architectural Drafting and Building Construction, Electrical Drafting, Mechanical Design, Civil Engineering Drafting and Surveying	90.2	9.8	90.0	10.0
Ralph McKee	Automotive, Electrical Installation, Machine Shop, Woodworking, Cosmetology, Graphics	82.5	17.5	84.6	15.4
Graphic Communication Arts (formerly the New York School of Printing)	Printing, Photo-computer Typesetting, Journalism, Advertising Skills	74.9	25.1	64.1	35.9
Art & Design	Printing, Journalism, Advertising Skills	59.0	41.0	66.1	33.9

TABLE I (continued)

School	Selected Skill Programs	1979-1980 % of Total Enrollment Males	1979-1980 % of Total Enrollment Females	1983-1984 % of Total Enrollment Males	1983-1984 % of Total Enrollment Females
Queens Vocational	Computer Automation Instrumentation, Electrical Installation, Practical Nursing, Cosmetology, Machine Shop, Stenography	48.9	51.1	51.2	48.8
Eli Whitney	Technical Electronics, Business Education, Cosmetology, Fashion, Cabinetmaking	38.6	61.4	47.4	52.6
Fashion Industries	Fashion Design, Textile Design, Interior Decorating, Merchandising	7.4	92.6	9.4	90.6
Grace H. Dodge	Cosmetology, Accounting, Health Careers, Secretarial Skills, Photography	7.4	92.6	12.1	87.9
William H. Maxwell	Secretarial Studies, Fashion Arts, Health Careers, Cosmetology, Data Processing	0.6	99.4	8.0	92.0
Jane Addams	Word Processing, Stenography, Typing, Cosmetology, Practical Nursing	0.3	99.7	1.9	98.1
Mabel Dean Bacon	Cosmetology, Business Careers, Health Careers	0	100.0	5.6	94.4

In individual schools, these increases range from admission of an additional nine to an additional 341 young women when comparing the 1979-1980 and 1983-1984 school years. Consequently, the number of schools with male enrollments of 95% or more stands at four, a decrease of three since FARE's last study two years ago. Still, seven of the ten schools remain 90% or more male.

Several schools have shown remarkable progress in increasing the number of female students. The percentage of young women enrolled in Samuel Gompers has risen from 1.3% to 13.4% between 1979-80 and 1983-84. Similarly, the percentage of young females at George Westinghouse has risen from 6.1% to 17.9%. In contrast, progress at other vocational schools has been slower. The percentage of young women enrolled at Automotive has only risen from .1% to .6% and at Aviation, enrollment has only risen from .9% to 2.8%.

A review of enrollments in specific vocational programs show similar progress: while many programs remain largely sex-segregated along stereotypic occupational lines resulting in program enrollments which are often almost exclusively male or female, small inroads have been made. For example, during the 1981-82 school year, young women represented 5.5% of the carpentry students, but two years later during 1983-1984, the percentage of female carpentry students had risen to 10.0%. Less significant gains are noted in the fields of woodworking and electrical installation. However, these gains for female students have been quite uneven. In the fields of welding, body and fender repair and plumbing and pipefitting, young women still represent less than 1% of the student register. In addition, the statistics indicate that little progress is being made in the areas of air conditioning, machine shop/tool, diesel mechanics or sheet metal. Needless to say, female students still comprise 96.9% of the cosmetology enrollment. (See Table II).

TABLE II*

PERCENTAGE OF FEMALES ENROLLED IN TRADE AND INDUSTRY EDUCATION PROGRAMS IN NEW YORK CITY'S VOCATIONAL/TECHNICAL HIGH SCHOOLS 1981-1984

Program	% Females	
	1981-82	1983-84
Welding	0.0	0.0
Body and Fender Repair	0.4	1.0
Plumbing and Pipefitting	0.7	0.7
Auto Mechanics	0.8	1.7
Air Conditioning	1.1	0.6
Electric Installation	2.1	3.4
Aviation (Airframe)	2.5	3.8
Machine Shop/Tool	4.9	2.8
Woodworking	4.7	7.8
Appliance Repair	5.1	5.9
Carpentry	5.5	10.0
Diesel Mechanics	5.9	1.1
Drafting	8.0	8.3
Sheet Metal	12.8	7.2
Graphic Arts	32.8	36.7
Commercial Arts	47.1	31.8
Commercial Photography	63.4	60.5
Fashion/Interior Design	93.9	94.6
Cosmetology	98.3	96.9

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*Based on data from the Office of Planning and Development, Occupational Education, New York City Board of Education.

For a school to attract more female students it can take one or more of the following three actions:

1. add programs which have traditionally attracted mostly young women;
2. add less sex-stereotyped programs; or
3. integrate more young women into existing "nontraditional" programs by changing the school's image and environment and by challenging sex stereotypes associated with particular occupations.

With different degrees of effort and success, all ten of the schools FARE investigated have made changes following the approaches described above in steps two and three. None of the ten schools have fallen into the trap of simply adding programs which traditionally attract young women.

Between the fall of 1980 and the spring of 1984 some schools added less sex-stereotyped programs, referred to as "crossovers", to their curricula. Crossovers are typically in those occupational areas which are newly developing as a result of technological advances or which are older occupations that are changing as a result of new technology. For example, Alfred E. Smith now offers technical drafting and George Westinghouse now offers computer technology. Increased female enrollments within less sex-stereotyped programs account for 32.6% of the total increase in female students in these schools.*

The inclusion of females in high technology occupations which are expanding or newly developing is necessary to avoid the creation of new occupational stereotypes. However, these new programs cannot be the panacea for school desegregation. To desegregate a school only by adding a new program is to risk the development of female ghettos within schools and to limit the access of young women to the traditionally male programs. For example, eight of the ten young women attending Alfred E. Smith are in the new drafting program. Only two young women are enrolled in traditionally male programs.

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*The total number of females in the traditionally male schools increased by 541; 176 of those females are enrolled in less stereotyped programs and 365 have been added to traditionally male programs. (Occupational enrollment figures for the 1979-80 school year were unavailable. Therefore the increase in the number of females was calculated by comparing 1980-81 to 1983-84 data although earlier in this report the increase in the number of females in each school was calculated by comparing 1979-80 to 1983-84 data.)

Many administrators reported that they are trying to change the school's image and environment or to challenge sex stereotypes associated with particular occupations. Their conscious efforts to counter conventional notions about work deemed suitable for men but not women seem to be taking effect. Increased enrollments among programs which traditionally prepared only young men accounted for 67.4% of the total increase in female enrollments in these schools. FARE assumes that some of this success, however modest the actual numbers, reflects the impact of leadership provided by local school personnel.

A comparison of each school's record shows that a school's efforts to increase the appeal of a traditionally male occupation can begin to counter the influence of sex stereotypes about that occupation. (See Table III) For example, both Samuel Gompers and George Westinghouse offer a program in appliance repair/electronics. Gomper's concerted efforts over the past four years to improve the image of this program with young women has paid off. Gompers has increased the number of females in this program by 29 while Westinghouse has dropped its female enrollment in this program by three. Similar efforts to overcome occupational stereotypes at Automotive have also been successful in increasing the number of young women enrolled in the auto mechanics program by six. Without this kind of effort at Alfred E. Smith, the number of female students in their auto mechanics program has dropped by four.

TABLE III*

ENROLLMENT FIGURES BY PROGRAM OF FEMALE STUDENTS IN NEW YORK CITY'S TRADITIONALLY MALE VOCATIONAL/TECHNICAL HIGH SCHOOLS 1980-81 and 1983-84

High School	Existing Programs with Increased Female Enrollments			Existing Programs with Same or Decreased Female Enrollments			New Programs	
	Program	Number of Females 80-81	Number of Females 83-84	Program	Number of Females 80-81	Number of Females 83-84	Program	Number of Females 83-84
Automotive	Body & Fender Repair/Automotive Mechanics	3	9				Air Conditioning	0
							Diesel Mechanics	0
							Welding & Cutting	0
Aviation	Electrical/ Electronic Tech	0	1	Machine Shop & Machine Tool	1	1	Electrical Installation	2
	Air Mechanics (Airframe)	28	76				Small Engine	0
							Sheet Metal	4
							Welding & Cutting	0
Chelsea Vocational	Carpentry	0	2				Woodworking Occupation	9
	Electrical Installation	0	8					
	Appliance Repair/ Electronic	0	14					

*Based on data from the Office of Funded Programs, New York City Board of Education.

TABLE III (cont.)

High School	Existing Programs with Increased Female Enrollments			Existing Programs with Same or Decreased Female Enrollments			New Programs	
	Program	Number of Females 80-81	83-84	Program	Number of Females 80-81	83-84	Program	Number of Females 83-84
East New York	Trade/Industry PreVoc	29	41	Mechanical/Electro-Mech Tech	0	0	Architectural Design	3
				Air Mechanics	20	18	Civil Technology	1
				Carpentry	22	5	Electrical/Electronic Tech	7
				Electrical Installation	12	1	Woodworking	7
				Machine Shop & Tool	1	0	General Industrial Trade	10
							Business Related	4
Thomas Edison	Computer Operations	14	21	Electrical/ Electronic Tech	11	10	Business Related	3
	Typing/Clerical/ Civil Serv.	11	14	Air Conditioning	2	2	Computer Tech	8
	Architectural Design	2	13	Carpentry	15	9	Chemical Tech (Industrial)	2
	Mech/Electro-Mech Tech	2	10	Electrical Installation	3	3	Trade/Industry PreVoc	7
	Body & Fender Repair	1	4	Machine Shop & Machine Tool	3	2	Woodworking	15
	Automotive Mechanics	5	12					
	Commercial Art	10	13					
	Plumbing & Pipefitting	0	1					
	Appliance Repair/ Electronics	2	4					
	Graphic Arts/Printing	5	22					

TABLE III (cont.)

High School	Existing Programs with Increased Female Enrollments			Existing Programs with Same or Decreased Female Enrollments			New Programs	
	Program	Number of Females 80-81	83-84	Program	Number of Females 80-81	83-84	Program	Number of Females 83-84
Samuel Gompers	Keypunch/Data Entry	5	63	Construction/ Custodial/Contract	7	4	Computer Programming	25
	Electrical/Electronic Tech	2	38				Word Processing	27
	Appliance/Repair Electronics	5	34				Electrical Installation	18
Ralph McKee*	Technical PreVoc	1	6	Electrical/ Electronic Tech	5	0	Civil Technology	2
	Graphic Arts/ Printing	11	21	Auto Mechanics	5	1	Computer Tech	5
				Plumbing & Pipefitting	3	0	Trade/Industry PreVoc	50
				Drafting Occupations	6	5	Woodworking Occupations	5
				Electrical Installation	6	0		
				Machine Shop & Machine Tool	4	0		
				Sheet Metal	1	0		

*Ralph McKee's program in Cosmetology has decreased the number of females enrolled from 200 in 1980-81 to 104 in 1983-84.

TABLE III (cont.)

High School	Existing Programs with Increased Female Enrollments			Existing Programs with Same or Decreased Female Enrollments			New Programs	
	Program	Number of Females 80-81	83-84	Program	Number of Females 80-81	83-84	Program	Number of Females 83-84
Alfred E. Smith	Architectural Design	9	11	Air Conditioning	0	0	Technical PreVoc	2
	Carpentry	7	39	Body & Fender Repair	1	1	Diesel Mechanics	1
	Plumbing & Pipefitting	0	1	Automotive Mechanics	12	8	Small Engine	1
							Welding & Cutting	0
George Westinghouse	Dental & Lab Tech	22	39	Carpentry	4	2	Computer Tech	49
	Electrical/ Electronic Tech	0	37	Drafting Occupations	10	4	Clock & Watch Repair	28
	Electro-Mechanical Tech	7	8	Electrical Installation	13	1	Woodworking	3
	Other Tech	3	30	Appliance Repair/ Electronics	19	16	General Industrial Trade	0
	Trade/Industry PreVoc	26	124					
William E. Grady	Electrical/Electronic Tech	5	6	Trade/Industry PreVoc	10	7	Computer Programming	3
	Appliance Repair/ Electronics	7	10	Carpentry	2	0	Computer Tech	7
				Electrical Installation	5	2	Environment Control Tech	0
				Air Conditioning	3	0	Woodworking	43
				Automotive Mechanics	5	5	General Industrial Trade	0
				Machine Shop & Machine Tool	0	0		

To attract and retain female students in schools or programs conventionally considered appropriate only for young men involves hundreds of changes at every point in the process of recruiting and educating young women. Leadership by school personnel in the schools and at the central Board of Education is critical to initiate and sustain the needed changes.

FARE found limited progress in reducing sex segregation in New York City's vocational/technical high schools. This suggests that many educational leaders in the city's vocational training system have not evidenced a strong enough commitment to the steps necessary to ensure equal opportunity for all students. Where progress has been made, it reflects initiatives taken by individual high schools, often acting autonomously rather than through centrally coordinated efforts, to make the necessary changes. In the next chapter, we review the efforts of some of the individual vocational/technical high schools to eliminate sex bias and segregation.

CHAPTER TWO

THE PATH TO PROGRESS

> I take the time and effort to explain and demonstrate to young women that there are ways out of the low-paying ghetto of women's work. It is encouraging how many girls will respond by choosing to study a "nontraditional" course in high school.
> -Vocational/Technical High School Recruiter

To move towards equality of opportunity in New York City vocational/technical high schools means we must create a school system in which more young women are enrolled in promising vocational training programs and encouraged to stay to complete their education. These changes will only occur if concerted efforts are made to reach out to female students at each point in the process at which young women become discouraged: during the recruitment and admissions procedures and later in the vocational schools.

After identifying the problems encountered by young women who want to enroll in "nontraditional" programs, it is possible to improve services and facilities for them. Some committed educators at several of the vocational/technical high schools have planned and implemented activities to address documented problems. Their efforts demonstrate that innovation is possible and that young women will enroll and succeed in "nontraditional" vocational programs if they are encouraged rather than discouraged.

Overcoming Barriers to the Enrollment of Female Students

> I saw a film about this school in junior high. I was really interested in the program, but since there were only boys in the movie, I was too embarassed to ask for an application. I made my friend go and get one.
> -Female Vocational/Technical Student

There are many hurdles ahead for a female student who wishes to pursue her vocational interests regardless of traditional sex stereotypes. As a young woman works through the elaborate process that is required in New York City for selecting a high school, sex stereotypes surface again and again.

These stereotypes and the doubts and fears they evoke for female students are frequently reinforced by people who influence a student's high school selection -- family members, peers, teachers and guidance counselors. One recruiter commented that it is very difficult to interest the girls in certain training programs because young women already have rigid ideas about what jobs they can have as adults. Another recruiter complained that she was working to overcome the influence of sex-stereotyped classroom instruction and materials as well as the biased advice of teachers and guidance counselors. Furthermore, young people and their families are as likely to have prejudiced attitudes as educators. A high school principal at a vocational/technical school lamented, "The hardest part of recruiting is to convince the girl's parents who sincerely believe their daughter cannot do the work."

The significance of family encouragement (or its absence) deserves special emphasis. Many of the young women currently in training programs serving mostly young men acknowledge that their parents actively encouraged an interest in skills considered unconventional for women. One student recalled, "My father and I work on mechanical things together all the time. He was really pleased when I decided to come here."

The process of selecting and applying to high schools in New York City is very complex. A young woman must first learn about the wide range of options: she has a choice of over 100 programs offered by a variety of specialized academic, neighborhood and vocational/technical high schools. She must finish gathering information and apply to the programs of her interest within the first two months of the school year because applications are due by November first. If she has selected any programs with special entrance criteria (screened programs), she may face special admissions tests or interviews after she applies. Finally, she must select the high school which she will attend from all those to which she has been accepted. The student's own decision is a major component in the admissions process.

This long and complex process of selecting a high school is likely to compound the feelings of uncertainty a young woman brings to a decision about whether to pursue vocational training in a school with mostly young men. There are many, many points when a female applicant may feel discouraged, isolated and frustrated. Without special efforts that provide support and encouragement, she is likely to conclude that the stereotypes are true and that a "nontraditional" career is inappropriate for her.

To counter stereotypes and anxieties female students have acquired, schools must provide opportunities for young women and their parents to learn more about how they can manage and benefit from vocational training in traditionally male occupations. Providing adequate information to the thousands of students who need it is itself a challenge: in 1983 there were 61,990 eighth grade students at 181 intermediate and junior public high schools in the New York City. There are few opportunities for staff other than classroom teachers to work with these students in small groups or on an ongoing basis. High school recruiters have limited contact since they must work with as many as 100 junior high schools. Guidance counselors work amidst an avalanche of students: the average caseload in the New York City junior high schools is one guidance counselor for 810 students.*

As a way to reach out to young women and their parents some schools have tried to alter their image and lessen the impact of cultural stereotypes about different occupations by revising their promotional materials and recruitment techniques. These changes are meant to influence female students as well as parents and school personnel such as guidance counselors. For example:

- o Some schools use school brochures with pictures of young women and men working together in shop class. Text is added which specifically encourages young women to apply.
- o Some schools have revised their audio-visual recruitment materials or discontinued them if they are sex-biased. The recruiter at Automotive uses a slide show with 80 pictures that includes scenes of young women working in auto mechanics class.
- o The recruiter at Samuel Gompers developed a "traveling road show" which performs at junior high schools. Information about the school's program is presented in a humorous and entertaining format including equipment demonstrations, dancing and costumes. As part of the show, female students always demonstrate equipment in a traditionally male field.
- o The recruiter at William E. Grady organized a series of mini-courses for eighth grade students and their guidance counselors to introduce them to the school and its training programs. Held at the high school, these one to four day courses provide students with a more intensive introduction to the school including "hands on" experience in the shop classrooms. Parents are also invited to attend to enlist their interest and support.

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*For guidance counselors at elementary schools there are 2,104 students for each guidance counselor. These numbers are based on unofficial data from the Bureau of Educational and Vocational Guidance (now part of the Office of Student Progress), New York City Board of Education.

Several schools have initiated special efforts to encourage female applicants during the long admissions process. For example:

- o An open house for prospective students is held at Samuel Gompers which includes tours of the shop and classrooms and an opportunity to talk with teachers and students.
- o Automotive gives prospective students a school tour and a basic introduction to the shop classes and equipment when they visit for their admissions test.

Through these innovations in recruitment strategies, individual vocational/technical high schools are beginning to take steps to provide role models for female students, to reinforce young women's confidence in their own abilities, and to project a new coed image of the schools.

Establishing an Environment Where Young Women Can Learn

> I enjoy having girls in my class. The three girls in this shop are all quite serious about their work. Besides, with the girls here, the boys tend to be calmer and more polite.
>
> -Vocational/Technical Shop Teacher

Once a young woman enters the "foreign" environment of a traditionally male school, she continues to face hurdles such as: attending classes in which she is the only female; resistance from male peers and teachers; her own sense of awkwardness and anxiety not only about her school experience but also about what to expect on the job; and inadequate facilities for her comfort as a student. Each of these can stir up a young woman's doubts about her skills, abilities and ultimately her choice of career.

The student's initial reception at the school can be trying. Male students, and sometimes teachers, may tease her or question her motives in the halls, cafeteria and classrooms. She may face awkward situations: being singled out when she is the only female in shop or gym class;

feeling excluded when class materials only address male students; and enduring the insensitive treatment of a teacher who asks "how would a girl do this problem?"

Shop teachers in New York City are typically men who have worked in their trade for years and have turned to teaching as a second career. After years of working in male-dominated shops, the transition to coed classes is unwelcome to some teachers. One principal reported that after a workshop on sex equity, teachers stayed late to argue about "girls being forced down our throats." At another school a shop teacher said: "I have seven girls in this class. I call them P.I.A.s. That's pains in the ass. I can do that because I have a teenage daughter and she's a P.I.A. too."

Resistance to the presence of young women is not limited to shop teachers or male personnel. Often staff express their discomfort rather obliquely. A female staff member at one predominantly male high school said to us: "Why would girls want to come here anyway? All they really care about is cosmetology and hair dressing." At another school, a counselor was surprised when we questioned her about whether the young women needed any help adjusting to training programs which have traditionally served only young men: "There are no special services here for anyone and there never have been. This school used to be for boys only, but we weren't offering boys any special services. It just so happened that only boys were enrolled."

In the meantime, the female student learns firsthand about the difficulties which she may experience in occupational areas where there are few women. One vice principal, who has worked in the automotive trade for many years, explained: "A girl will have an especially difficult time when she graduates. In shops where she can even get in, the oddity of a female worker will, in all likelihood, disrupt her work. I know one woman who was dismissed because her productivity was reduced by all the interruptions from clients who were curious about a female mechanic."

In the midst of this environment, a female student must continue to make decisions about her career. She may still have to select her course of study: many schools offer exploratory courses during the ninth grade and do not require students to select their program until tenth grade. And throughout her high school education, she must decide if she will stick to her career decision or change her mind and transfer out of the program.

Some schools have initiated activities designed to assist young women, young men, teachers, staff and administrators to adjust to the changes occuring within the school. In addition, some schools are attempting to provide better facilities and support for the young women. Until the Board of Education completes major building renovations, some schools have developed interim plans to modify existing facilities:

- Bathrooms in each school have been temporarily reallocated for use by young women.
- Visiting team locker rooms were allocated for female students to use.
- Steps to ensure safety for the young women include locked bathrooms with keys held at the main office and security guards posted at bathroom entrances.

Some schools have also changed school practices and policies to accommodate their coed populations. These efforts help to provide young women's educational needs and ease them into a new, and sometimes strange, environment. For example:

- A few principals set new standards for staff by confronting resistant teachers, establishing new policies and monitoring school practices. For example, one principal sent a memorandum to all staff on sexist language and directed faculty to develop classroom presentations that are sensitive to the coed population. A few principals have also provided assistance to teachers during this time of transition through staff training in sex equity workshops.

- There is a staff member in each high school who is designated as the local equal opportunity coordinator (LEOC) to receive, process and attempt to resolve complaints of discrimination in the school. Some LEOCs have not limited their activities to the complaint procedure but have also tried to educate the school community about sex discrimination and sexual harassment.

- At a number of schools classroom materials were revised. For example, at Aviation standard handouts which are used to supplement the textbooks were rewritten to address both male and female students.

- A few schools established new communication procedures to provide girls with the opportunity to notify school personnel about their problems. In some schools, there is an ombudsperson for the young women. At other schools, there are monthly meetings for young women or periodic meetings with the principal.

- Some principals have adopted a firm policy to deal with aggressive and offensive male behavior. For example, in one school, when a case of sexual harassment became extreme, the young man involved was suspended.

- In a few schools, staff ensure that school clubs and organizations are coed. These coed extracurricular activities help to develop friendships between male and female students. One school also encouraged students to participate in school sex equity efforts through their video club which did a tape describing how the girls have no opportunity to participate in gym classes.

- Some schools have organized coed teams or all-female teams in softball, handball, track and tennis.

- Some schools work with the male students to facilitate their social adjustment to a coed population. At one school, a pregnancy prevention program at the school includes classes for boys on sexuality and responsibility.

Several schools are also trying to facilitate the young women's transition by increasing their comfort with their role. Offering students the chance to learn about their new role together fosters mutual support. In addition, efforts to bolster students' confidence in their career choice and coping skills helps them during school and on the job.

Here are some examples of approaches followed in a few schools:

- Special orientation meetings for new female students introduce them to the school and special support personnel immediately. Young women may be assigned a guidance counselor, an ombudsperson or special resource person with whom they can discuss school and home problems. Several schools also arrange cluster scheduling to provide the opportunity for girls to meet and offer support to each other in classes.

- Efforts are made to encourage exploration of "nontraditional" options before making a choice of programs in the tenth grade. Some young women with strong math backgrounds receive special placement in a technical exploratory class. Other schools provide a complete tour of all available programs along with their shop classrooms.

- By monitoring the progress of female students, staff have been able to provide better academic support such as tutors or individual "performance contracts". These efforts help to compensate for math or mechanical anxiety.

- A teacher designed a required English course for ninth and tenth grade girls using texts that address issues young women face such as being a part of a single parent family, relationships with boys, and the life of working women. Providing some of the support which female students need through their regular schedule helps to avoid overloading their schedules and to integrate sex equity efforts into the curriculum.

- Pregnancy prevention programs have been instituted through hygiene classes or by arrangement with local social service agencies.

- Several schools provide career orientation by arranging meetings with women in the trades, field trips to sites where women are employed, and contact with organizations for women in "nontraditional" trades.

- When principals do hire new faculty, special emphasis is placed on their willingness to act as a role model by running school clubs or programs for "nontraditional" students.

The groundbreaking efforts of individual school leaders and staff in several of the sex-segregated vocational/technical high schools prove that equal opportunity for female students is possible.* When young women are properly encouraged and supported, they not only choose "nontraditional" vocational/technical programs, but also do as well as their male peers.

While some schools have made a significant commitment to providing better opportunities for female students, other schools have initiated little innovation. As a result, female students still constitute only 7.6% of the population in the traditionally male vocational/technical high schools. Because these young women are still such a small minority, they face unique challenges. In the next chapter, we describe the experiences of young women in schools which have historically trained young men. Their problems remind us that much remains to be done to ensure equality of opportunity for these and future vocational pioneers.

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*For a complete list of sex equity activities implemented by New York City vocational/technical high schools see Appendix D.

CHAPTER THREE

Vocational Pioneers: Adventure and Adversity

> It's like we're all brothers and sisters. At first it's hard, but then you get to know everybody.
>
> -Female Vocational/Technical Student

Young women who choose to enroll in schools that have traditionally trained young men are embarking on a course that is both satisfying and unsettling. Given the cultural stereotypes about what being female means, a young woman's choice to train seriously for any career may elicit a host of conflicts. Women have been taught to value home and family above work outside the home and sometimes even at the expense of that work. Older women workers struggle to integrate their personal and work lives.

A young woman who enters an occupational training program that has historically served only young men must confront these same conflicts at an earlier age and under circumstances that pose additional problems. Because of the unconventional nature of her career choice, the young woman may have trouble obtaining support from family or friends and may even encounter opposition and efforts to sabotage her decision. In addition, her presence in a mostly male environment frequently elicits a rush of attention from the young men. Sometimes this takes the form of teasing and harassment. In other instances, the young woman may face a sudden and intense popularity that is difficult to manage wisely and contrasts sharply with the disinterest or opposition she may experience at home. This context makes a young woman's efforts to integrate her social life, educational pursuits and the pressures of the traditional female sex role all the more difficult.

It is not surprising that the first young women to enter the sex segregated schools and programs in New York City's vocational education system recount experiences and report feelings that reflect a sense of ambivalence about their situation. Excitement is matched by some "battle fatigue" and pride is mixed with indignation. Young women desegregating vocational training in New York City are on a new frontier and can best be described as vocational pioneers.

The process of desegregation, as we know from the earlier experiences of non-white Americans, requires a period of profound and prolonged institutional adjustment. With the desegregating of New York City's vocational high schools, both the students and the system of which they are a part are beginning a time of significant change.

With proper preparation, many of the adjustments students, faculty and school administrators have had to make could have been anticipated to ease the time of transition for all of them. For the most part, there was little or no advance planning.

A major concern for those who are working to desegregate vocational education programs must be the well-being of those young women and men who are willing to be pioneers. This chapter presents the perspective of young women who are currently enrolled in traditionally male programs. The feelings expressed by these young women show that the process of adjustment is proceeding slowly, fitfully and unevenly. We believe that if advocates, educators and public officials remember the problems confronting these students, we can plan more wisely for the future.

On the Frontier

Initially, young women are only too aware of being in a small minority. One student said, "When I walked in the first day and saw all those boys, I just turned around and walked back out." Another young woman did not find the other three female students until a week after school began. She reported, "I was so scared that I always walked close to the wall with my head down. I was constantly getting lost and arriving late to class." She still does not feel comfortable at the school.

Feelings of isolation are exacerbated in some instances by being rejected and harassed by young men who are also suffering some discomfort and feeling threatened. Many students commented on insulting comments or behavior in hallways and lunchrooms that reflect male resistance to the invasion of their "turf". One young woman found this message written on the school building walls: "This school is for boys. Girls get out!" Another reported that "boys even take their pants off in the cafeteria."

In classes, such as shop, students find that the ambivalence of their teachers sometimes compounds their problems. Many female students reported being treated as too delicate for constructive criticism, dirty work or strenuous tasks. One young woman reflected this annoyance with paternalistic teachers: "They treat us like being a girl is some kind of disability. They insist on helping even if we don't need it." On the other hand, many young women claimed that teachers were supportive and helpful and treated all the students in the same way.

Young women are still excluded from many of the schools' routine activities. For example, in many schools there are no scheduled sports events -- in gym classes or after school -- that include female students. Many young women reported that they are discouraged from participating in gym, but given a passing grade in the class because they take attendance for the teacher. Where steps have been taken to accommodate female students, these arrangements are not necessarily suitable or satisfactory. At one school where there is a small locker room for the girls, they report that the male gym teacher and students enter without knocking. A few schools offer coed teams (for example, handball, tennis and track), and in one school there is an all-female softball team.

The availability of non-athletic extracurricular events for young women varies. In one school the young men voted to exclude female students from the "boys clubs", but in many schools young women are beginning to find their niche in student government and vocational clubs. One student, much to her surprise, was elected an officer in the senior honor society: "I was shocked when the boys elected me vice president. I thought they'd make me secretary because I'm a girl."

Virtually all the young women interviewed commented on the limited availability of restrooms. Two schools expanded the availability of facilities by designating a faculty lounge for the female students to use. This door is kept locked and the students must go to the principal's office to get the key. This worked at one school, but teachers at the other school complained so the students were told not to use it. At one school, there are two restrooms for the female students, but the boys have taken over one as a smoking lounge. Students at other schools reported that they never used the school restrooms. Their reasons included possible harassment by the boys outside the door, the uncleanliness of the facility and fear of being attacked.

To some degree problems, such as sexual harassment and inadequate sports programs, that were identified during our interviews reflect some conditions that may be common to many New York City high schools. Nonetheless, the culture that has evolved in the predominantly male schools appears to exacerbate these problems.

Survival Skills

Amidst an environment that is sometimes uncomfortable -- where young men show off, play pranks and question the abilities of female students -- these young women still manage to survive. The female students we met described ways in which they overcome their sense of being afraid, different, excluded, harassed, isolated or patronized. Among the strategies they have adopted are:

- Often female students attempt to provide support for each other. The solidarity of "being in this together" comforts and bolsters many young women. They are conscious of the need to nurture their commitment and courage. For example, the female students at one school requested permission to have the same lunch period.

- Some young women enlist the support of male students. They emphasize the security and strength provided by these friendships. One student remembered what happened when a teacher asked her to monitor the classroom door: " A boy slipped out and I reported him to the teacher. The next day in the cafeteria, he threatened to beat me up. I might have really been hurt, but several guys who are my friends stood up behind me and said he'd have to fight them too."

- Older female students advise new students to be assertive. One student noted: "At first the boys call you names and talk about how you look. They may even grab you. But you have to learn when to ignore things -- which is most of the time -- and when to stick up for yourself, talk back and tell them off." Another offered this advice: "Stick to your work. Be firm, but nice if the boys give you a hard time because it will stop once they get to know you. Don't let the boys sweet talk you into skipping classes."

Overall, female students expressed satisfaction with their choice despite the difficulties. One student echoed the comments of others when she said: "You have to learn how to handle the boys or leave." None of the young women interviewed regretted her decision to pursue training in a program or school still primarily serving young men. And they agreed that "having more girls here makes it easier for all of us." Some wondered, however, how many young women choose not to attend a "nontraditional" program because of the difficulties they must confront. Clearly in numbers comes greater strength which helps to comfort students and to create a more supportive atmosphere.

As the previous three chapters indicate, very slowly, female students are becoming members of the traditionally male vocational/technical high school community. Progress, however, has been extremely uneven. Ultimately, the responsibility for a quicker pace and systemic improvement resides with the Central Board of Education. However, community groups, parents and public officials must also contribute to this effort. In the next chapter, we examine the role that the Central Board and others must play to ensure equality of opportunity in vocational education.

CHAPTER FOUR

Inches to Yardsticks

> The central administration has not taken substantive actions to eliminate discrimination on the basis of sex in the eleven vocational high schools. Units of the central administration have failed to carry out the nondiscriminatory policies of the Board of Education or the Chancellor.
>
> -Final Letter of Findings
> New York State Education Department
> November 14, 1983

Perhaps it is difficult to grasp the importance as well as the magnitude of the tasks required to insure sex equity in vocational training because the entrance of more women into predominantly male occupations raises fundamental questions about sex roles in our society. The appearance of women carpenters, electrical engineers and auto mechanics contradicts convictions about the "proper place" of women. Equality of opportunity in vocational training and career choice also challenges in profound ways the distribution of money and power between men and women in American life. Therefore, the expansion of vocational opportunities for young women is part of a larger effort to increase acceptance for a greater similarity in sex roles and to eliminate distinctions between "women's work" and "men's work".

Concern about sex bias in public education stems from a belief that discrimination on the basis of gender is an unacceptable form of prejudice in American society. This is a controversial proposition since some people believe that women and men ought to have separate spheres of work and influence. Thus the fact that vocational education in New York City is highly segregated is seen as an egregious injustice by some, but a reflection of the natural order of things by others. The way in which different perspectives on sex bias have polarized people has, for too long, deprived this issue of the legitimacy it needs to elicit concerted action from public officials, parents, citizens and educators.

Despite continuing debate about the meaning of sex bias, there is now considerable support for making sex discrimination unacceptable and illegal. There are federal, state and local laws and regulations which reflect the public's interest in prohibiting publicly-funded institutions from discriminating on the basis of sex and which require institutions to enforce standards guaranteeing equal opportunity for women. Also, a large proportion of Americans have come to realize that most adult women will work outside the home, either because of economic necessity or because of interest in the challenges inherent in such work. They recognize the need for adequate opportunities to prepare young women to do this. And finally, many parents want their daughters to have the right to pursue jobs that appeal to them.

There is then every reason to expect the New York City Board of Education to exercise strong administrative leadership to make the changes required to desegregate its vocational/technical high schools. Although the Board of Education is moving slowly, efforts have begun in four key areas: policy development, policy change, program revision and building renovations. These initiatives include:

Policy Development

- development of a Voluntary Compliance Plan in response to the State Education Department's findings of sex discrimination in the vocational high schools and at the Central Board; and
- establishment of a Chancellor's Task Force on Sex Equity in December 1983 to offer advice on matters relating to the elimination of sex discrimination, bias and stereotyping in the public school system and the promotion of sex equity for students and employees.

Policy Change

- giving female students priority entry into "unscreened" programs; and
- developing a new personnel program to address the lack of

female shop teachers within a broader program to counteract the shortage of vocational teachers.*

Program Revision

- obtained funds to modify sex-biased print materials used in vocational/technical courses;
- offered sex equity training to three representatives of each vocational/technical high school who will in turn train other staff members of their respective schools;
- applied for and received VEA** funds to support less sex-segregated programs in selected vocational/technical high schools;
- applied for and received a grant from the Women's Educational Equity Act Program of the U.S. Department of Education to support a one year model program for the recruitment and retention of young women at a traditionally male vocational/technical high school; and
- assisted several vocational high schools in a review of their admissions tests for "screened" programs to insure they were not sex-biased.

Building Renovations

- began planning building renovations for the ten traditionally male schools to insure female students have adequate bathroom and locker room facilities. (Actual renovations have begun at several of these schools.)

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*Vocational teachers are now required to have five years work experience plus 60 college credits. Under the new program, teachers train over five years to gain teacher certification while receiving 90% of their regular faculty salary. During those years, a person must alternate between spending six months as a vocational teacher's assistant and six months working in the industry while attending a college program at night. Of the 28 participants in this new program, two are women who will teach in "nontraditional" areas.

**The Vocational Education Act (VEA) Amendments of 1976 mandate affirmative efforts by states to eliminate sex bias, discrimination and stereotyping in all federally-funded vocational education programs. To fulfill this mandate, funds are available to local school districts to encourage movement by students into "nontraditional" vocational training programs.

To achieve change at a pace that is desirable, leadership is critical. To date, the New York City Board of Education has resisted taking the necessary leadership. For instance, the Board of Education has yet to encourage the community school districts to address guidance practices in junior high schools which steer young women into the predominantly female vocational/technical high schools. Nor has there been any attempt to begin a citywide public education campaign so that parents and students can learn about the wide range of vocational training programs open to young women as well as young men.

Further, the Central Board has left sex segregation efforts to the discretion of the local vocational/technical high school principals and staff. As documented earlier in this report, this policy has led to very uneven implementation of sex equity activities in the vocational high schools. Yet, the Central Board of Education has not forcefully communicated to these schools that inaction is unacceptable and that continued lack of effort will result in sanctions against the school.

Other areas where the Central Board of Education has failed to take decisive leadership tc end sex discrimination in the vocational/technical high schools include:

- o coordinating the various divisions of the Central Board to provide a comprehensive plan to eliminate sex discrimination;*
- o implementing certain activities contained in the Voluntary Compliance Plan without waiting for final State Education Department approval which would demonstrate a commitment to the elimination of sex discrimination in the vocational/technical high schools and within the central administration;

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*For example, the Division of School Buildings coordinates all building renovations; the Division of Personnel develops personnel policies; the Office of Funded Programs obtains federal vocational education funds; and the Office of Equal Opportunity provides staff training and development in civil rights areas.

- developing a data collection system to ensure that data is collected and analyzed annually by sex, grade, program and school to provide a basis for measuring the impact of sex desegregation efforts;
- providing or seeking sufficient funds for proposed sex equity activities; and
- coordinating sex equity efforts with local principals and staff. (Several school personnel expressed frustration that they are not notified about funding opportunities under the Vocational Education Act or included in systemwide sex equity policy and program decisions which ultimately affect their schools.)

As a consequence of the Central Board's inadequate leadership, those individual school principals and staff who have taken some small but significant steps to broaden occupational options for female students feel isolated. Their commitment and courage goes unheralded. Their innovations have not been acclaimed or adapted for replication throughout the system. In summary, those who have shown a personal dedication to working out new approaches to overcome sex bias feel that their ideas are ignored and their energy untapped.

Another consequence of the Board's lack of leadership in this area is the opportunity which is lost to help the community of New York City face the seriousness of the issues at stake: sex bias is a form of prejudice which results in inferior educational opportunities and inadequate occupational preparation for young women. Ironically, while many of our influential community members are hesitant to take a public stand about sex discrimination, they are not so reticient in their private lives: they use their power and resources to insure that their daughters will not be limited by sex discrimination in their choice of careers.

Although the Board of Education has the most direct responsibility for ensuring equal opportunity for its female vocational students, community activists, parents and other concerned citizens must also address the pervasiveness of sex bias in American education. Indeed community groups have to provide better leadership around problems associated with sex bias in education. Action by the Board of Education is not sufficient to solve this problem. While the Board has a responsiblity to the community it serves, the community has a responsibility to its young people.

Community groups need to provide advocacy for the issues school personnel recognize as contributing to sex discrimination in vocational training:

- Inadequate efforts to eliminate stereotypic sex roles which appear in the curricula in elementary, junior and senior high schools.
- A lack of orientation to "the world of work" for elementary school students.
- Inadequate career education to help students make their choices about high schools more wisely and knowledgably.*
- An inadequate recognition by some parents that sex segregation in vocational education denies young women and men the opportunities they need to prepare adequately for their futures.

And community groups need to: press for a sensible but speedy plan to end segregation in the vocational high schools; monitor changes that are made whether through such a plan or through other approaches; help educate the public about the negative impact of sex bias on all students; and lobby for additional funds to cover the costs associated with desegregation.

The challenge inherent in eliminating sex bias and segregation in vocational high schools requires sustained effort. FARE believes that by working together -- educators, parents, public officials and concerned citizens -- we can improve vocational education for all students. Groups and individuals must contribute to this effort according to their respective positions and expertise. We can reshape vocational education so it offers the training students need to become self-supporting and self-respecting adults.

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*There are no uniform policies regarding career education in the 32 community school districts which manage the elementary, intermediate and junior high schools.

CHAPTER FIVE

FINDINGS AND RECOMMENDATIONS

Finding:

New York City continues to maintain a sex-segregated vocational high school system. Progress has been evident at several traditionally male schools which have initiated efforts to enroll more women. Yet, seven of the ten predominantly male schools remain 90% sex-segregated.

Recommendations:

1. New York City Board of Education officials should implement a long-range, comprehensive plan for desegregating the "male" vocational schools and programs and for eliminating sex discrimination, bias and stereotyping in the areas of access, recruitment, admissions, treatment, facilities and services. Such a plan is contained in the Voluntary Compliance Plan currently being negotiated with the State Education Department. Activities not questioned by the State Education Department should be implemented immediately rather than waiting for the full plan to be approved before beginning the implementation process.

2. This action plan should be implemented in conjunction with principals and other key staff at the vocational high schools and backed up by sufficient resources and expertise to ensure successful implementation.

3. Board of Education officials should strongly support and encourage the expansion of existing sex desegregation efforts already begun at several schools to all the vocational/technical high schools. The Board of Education should:

a. publicize successful initiatives to give public recognition to the principals and staff members who are working to desegregate these schools;

b. provide on-going opportunities for staff at these schools to meet with their counterparts at other schools to share successful efforts to overcome sex discrimination in their schools; and

c. provide incentives and rewards (e.g. awards, additional resource allocations) to those schools whose efforts significantly increase female enrollments in "nontraditional" programs.

4. Board of Education officials should monitor desegregation efforts at the vocational/technical high schools. As part of this monitoring effort, the Board of Education should:

a. provide technical assistance to schools which need help implementing desegregation activities; and

b. prepare an annual analysis of applications, admissions, enrollments, transfers, dropouts and graduations of female students in the "male" schools and programs.

Finding:

Young women applying to high schools in New York City still lack access to information on trade and technical schools, programs and occupational opportunities. Although outreach to these young women by the vocational/technical high schools has improved, these young women are still not encouraged by school personnel in the lower grades to explore all of the city's vocational education programs.

Recommendations:

1. The New York City Board of Education and local community school districts should ensure that guidance counselors and other faculty "advisors" in the junior high, intermediate and high schools inform female students of all "nontraditional" vocational options, including those in Shared Instruction and After School Programs. Counselors and advisors should further discuss with female students the likelihood of their having to

work as adults and of the wages and job opportunities available in traditionally male trade and technical fields. Finally, to aid in eliminating sex bias and stereotyping from guidance practices, in-service training should be required for all guidance personnel.

2. Schools should examine guidance materials to determine what changes are necessary to eliminate sex bias and stereotyping and to expose female students to the full range of vocational options.

3. To focus more attention on the vocational and occupational options available to young women, the Board of Education and local community school districts should:
   a. provide courses on "the world of work" to reduce sex bias about occupational areas beginning in elementary school;
   b. hold career discovery days so junior high school students can meet people employed in jobs once considered unacceptable for someone of their sex;
   c. schedule career fairs in conjunction with the vocational/technical high schools with a special section devoted to new options for students of either sex; and
   d. encourage female students to take industrial arts classes as well as home economics classes in junior high and intermediate schools.

4. The Board of Education and local community school districts should coordinate efforts for a citywide education campaign to inform both parents and students of the range of occupational training programs available in the New York City public school system. Special emphasis should be given to the opportunities for young women in "nontraditional" vocational education.

Finding:

The current recruitment practices of New York City's predominantly male vocational high schools have improved but more could be done (especially in the less responsive high schools) to encourage female students to consider as viable educational options those schools and programs offering skill training in the trade and technical fields.

Recommendations:

1. Those vocational high schools with predominantly male enrollments which have not yet developed and implemented special recruitment programs designed to attract female students should consider adopting elements of special recruitment programs successfully implemented by some vocational high schools. These program elements include:
   a. recruitment teams composed of female students, staff and women working in "nontraditional" jobs;
   b. the targeting of "female" classes in the junior high and intermediate schools (such as home economics and typing classes) for visits from high school recruitment teams;
   c. the designation of a specific individual(s) to develop and coordinate recruitment efforts for girls;
   d. the publicizing of any special services or activities available at the school which might appeal to female students (e.g. female support groups, buddy systems); and
   e. the development of special open houses for female students and their families designed to encourage them to explore the school's shops and other offerings.
2. More effort should be made in the predominantly male schools which have yet to develop "crossover" or skill training programs which prepare students for entry into occupational fields that are currently "mixed" by sex -- such as data processing, broadcast technology and graphic arts -- in order to attract young women into the school. Once in these male schools, girls should be exposed to the schools' offerings through first year exploratory courses.
3. Because recruitment plays such a critical role in encouraging girls to explore "nontraditional" vocational options, the Board

of Education should continue to focus significant efforts in this area over the next few years. Some of the most important contributions the Board could make in this area are:

a. identifying and publicizing successful recruitment strategies being used by some of the traditionally male vocational schools;

b. holding meetings where principals, guidance personnel and other school faculty involved in recruitment efforts can share ideas, experiences and problems regarding recruitment; and

c. organizing a Speaker's Bureau composed of "nontraditional" workers to provide role models for students at all levels. Members of the Speaker's Bureau could visit elementary schools to talk about their work; attend career discovery days at intermediate and junior high schools; and visit high schools to discuss their job experiences and to encourage students to consider a full range of job opportunities.

Finding:

The Board of Education has begun to review admissions tests for the "screened" vocational programs, but no definitive action has been taken to ensure that admissions criteria are free of sex bias.

Recommendations:

1. The Board of Education should move quickly to adopt non-biased admissions criteria for "screened" vocational programs.

2. Qualified female students should be given priority for admission into male dominated "screened" courses until a more balanced enrollment for males and females is achieved.

Finding:

Many female students enrolled in predominantly male vocational schools and programs have noticed a significant reduction in discriminatory treatment and harassment by teachers and students. Those students still confronting discrimination and harassment still have little or no recourse for redress. It appears that the reduction in discriminatory treatment and harassment is the result of two major factors: (1) the increased number of female students in some male schools or (2) the presence of a principal who has taken a leadership role to improve the school environment for young women.

Recommendations:

1. Principals should provide continued leadership in eliminating discriminatory treatment and harassment from the school environment by making it clear to school staff and students that such behavior is not appropriate and will not be tolerated.

2. In-service training should be required for all school administrators and staff to enable them to explore their own attitudes towards women working in fields once dominated by men and to help them identify and cope with difficulties faced by female students preparing for "men's work".

3. Traditionally male vocational schools which have not yet instituted programs to provide female students with a more supportive milieu should do so immediately. These programs should build on successful efforts in several of the more progressive vocational schools and should include:
   a. appointing an ombudsperson to whom young women can turn if they have problems adjusting to their new environment;
   b. scheduling young women into classes in clusters so they are not isolated;
   c. developing a big sister program or buddy system;
   d. reviewing physical education programs to ensure that all female students have access to exercise and instruction; and
   e. reviewing extracurricular athletic programs and student clubs to ensure that they are accessible to or equitable for all students without regard to sex. Where inadequacies or inequities are found, immediate steps should be taken to correct them.

4. Support services should be made available to male students who feel threatened by the presence of female students to help foster the spirit of cooperation that is necessary during the school's transition to a coeducational institution.

5. The Chancellor of the Board of Education should issue an official regulation on sexual harassment to provide an appropriate grievance procedure that will resolve complaints promptly and impose appropriate sanctions when violations occur.

6. The Chancellor of the Board of Education should move quickly to issue a revised grievance procedure that is not unnecessarily lengthy or complex and that provides for prompt, equitable resolution of complaints.

Finding:

Plans have been made to upgrade inadequate and inferior facilities available to young women in the traditionally male vocational schools over the next five years. At present, only some schools have made interim plans to address inadequacies.

Recommendations:

1. Community organizations, parents and civil rights groups should monitor plans proposed by the Board of Education to upgrade restrooms, locker rooms and other facilities in the predominantly male vocational schools to render them adequate and equitable for both sexes.

2. In the meantime, interim plans should be developed by the individual vocational/technical high schools to provide all students with adequate access to restrooms and locker rooms. Such plans can include temporarily converting a male bathroom and providing locker space in a faculty lounge.

Finding:

The traditionally male vocational high schools are not prepared to offer supportive services to parenting students.

Recommendations:

1. Principals should obtain the necessary information about child care services for student mothers to facilitate referral and placement at accessible and affordable child care centers.

2. The Board of Education should establish a family day care program at one of the city's predominantly male vocational/technical high schools as part of its on-going effort to serve student parents.

Finding:

Community groups have not assumed enough responsibility to help address sex bias in vocational education and to speed the process of desegregating the vocational/technical high schools.

Recommendations:

1. Community groups should provide greater public education efforts to help parents and young people understand the negative, consequences of limiting girls to preparation for "women's work" and "men's work." A critical part of such public education efforts should be information about work life expectations, wages and job opportunities.

2. Changes made to address sex bias at individual high schools and at the Central Board should be monitored by community groups, advocates and parents to determine their effectiveness. If these changes are deemed ineffective, alternative strategies must be recommended and advocated.

3. Advocacy efforts by community organizations, parents and civil rights agencies are needed to ensure that adequate personnel and funds are available to implement the necessary changes in the vocational/technical high schools, at the Central Board and within the community school districts. Advocacy efforts should be planned to:

   a. encourage more sex equity activities in community school districts, especially in the career guidance area; and

   b. urge maximum use of Vocational Education Act and other funds to encourage "nontraditional" training programs for young women.

APPENDIX A*

NUMBER AND PERCENTAGE OF MALE AND FEMALE STUDENTS ENROLLED IN NEW YORK CITY'S VOCATIONAL/TECHNICAL HIGH SCHOOLS 1979-1984

Bronx

	Alfred E. Smith			Grace H. Dodge			Jane Addams			Samuel Gompers		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
1979-1980	2,086 (99.8%)	4 (0.2%)	2,090 (100%)	150 (7.4%)	1,866 (92.6%)	2,016 (100%)	5 (0.3%)	1,499 (99.7%)	1,504 (100%)	1,027 (98.7%)	14 (1.3%)	1,041 (100%)
1980-1981	2,285 (99.6%)	9 (0.4%)	2,294 (100%)	157 (8.0%)	1,803 (92.0%)	1,960 (100%)	16 (1.0%)	1,610 (99.0%)	1,626 (100%)	1,087 (96.5%)	40 (3.5%)	1,127 (100%)
1981-1982	1,800 (100%)	0 (0%)	1,800 (100%)	170 (8.6%)	1,801 (91.4%)	1,971 (100%)	31 (1.9%)	1,604 (98.1%)	1,635 (100%)	1,322 (94.7%)	74 (5.3%)	1,396 (100%)
1982-1983	1,356 (99.3%)	9 (0.7%)	1,365 (100%)	150 (8.1%)	1,708 (91.9%)	1,858 (100%)	27 (1.6%)	1,703 (98.4%)	1,730 (100%)	1,461 (90.2%)	158 (9.8%)	1,461 (100%)
1983-1984	1,422 (96.0%)	60 (4.0%)	1,482 (100%)	243 (12.1%)	1,767 (87.9%)	2,010 (100%)	31 (1.9%)	1,569 (98.1%)	1,600 (100%)	1,347 (86.6%)	208 (13.4%)	1,555 (100%)

*Based on data from the Division of High Schools and the Office for Student Information Services, New York City Board of Education

APPENDIX A (continued)

Brooklyn	Alexander Hamilton			Automotive			East New York			Eli Whitney		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
1979-1980	1,021 (90.2%)	111 (9.8%)	1,132 (100%)	1,636 (99.9%)	1 (0.1%)	1,637 (100%)	1,541 (97.5%)	40 (2.5%)	1,581 (100%)	906 (38.6%)	1,441 (61.4%)	2,347 (100%)
1980-1981	1,053 (90.4%)	112 (9.6%)	1,165 (100%)	1,626 (99.6%)	3 (0.2%)	1,629 (100%)	1,337 (96.7%)	46 (3.3%)	1,383 (100%)	802 (35.9%)	1,435 (64.1%)	2,237 (100%)
1981-1982	1,168 (89.9%)	131 (10.1%)	1,299 (100%)	1,579 (99.9%)	1 (0.1%)	1,580 (100%)	1,429 (96.7%)	49 (3.3%)	1,478 (100%)	838 (37.4%)	1,404 (62.6%)	2,242 (100%)
1982-1983	1,109 (88.5%)	144 (11.5%)	1,253 (100%)	1,442 (99.8%)	3 (0.2%)	1,445 (99.8%)	1,137 (95.2%)	57 (4.8%)	1,194 (100%)	729 (36.8%)	1,254 (63.2%)	1,983 (100%)
1983-1984	837 (90.0%)	93 (10.0%)	930 (100%)	1,477 (99.4%)	9 (0.6%)	1,486 (100%)	1,242 (91.0%)	123 (9.0%)	1,365 (100%)	1,027 (47.4%)	1,138 (52.6%)	2,165 (100%)

	George Westinghouse			William E. Grady			William H. Maxwell		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
1979-1980	2,026 (93.9%)	131 (6.1%)	2,157 (100%)	1,978 (98.7%)	27 (1.3%)	2,005 (100%)	11 (0.6%)	1,702 (99.4%)	1,713 (100%)
1980-1981	1,959 (93.7%)	132 (6.3%)	2,091 (100%)	1,803 (98.0%)	37 (2.0%)	1,840 (100%)	20 (1.2%)	1,691 (98.8%)	1,711 (100%)
1981-1982	1,821 (94.7%)	101 (5.3%)	1,922 (100%)	1,738 (98.1%)	34 (1.9%)	1,772 (100%)	49 (2.9%)	1,649 (97.1%)	1,698 (100%)
1982-1983	1,384 (87.2%)	204 (12.8%)	1,588 (100%)	1,539 (96.7%)	53 (3.3%)	1,592 (100%)	52 (3.5%)	1,426 (96.5%)	1,478 (100%)
1983-1984	1,473 (82.1%)	321 (17.9%)	1,794 (100%)	1,607 (94.8%)	89 (5.2%)	1,696 (100%)	135 (8.0%)	1,552 (92.0%)	1,687 (100%)

APPENDIX A (continued)

MANHATTAN

	Art and Design			Chelsea			Fashion Industries			Mabel Dean Bacon		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
1979-1980	1,327 (59.0%)	923 (41.0%)	2,250 (100%)	1,190 (100%)	0 (0%)	1,190 (100%)	177 (7.4%)	2,220 (92.6%)	2,397 (100%)	0 (0%)	1,277 (100%)	1,277 (100%)
1980-1981	1,462 (61.0%)	933 (39.0%)	2,395 (100%)	1,028 (100%)	0 (0%)	1,028 (100%)	171 (7.3%)	2,156 (92.7%)	2,327 (100%)	0 (0%)	1,370 (100%)	1,370 (100%)
1981-1982	1,380 (61.2%)	874 (38.8%)	2,254 (100%)	1,062 (99.5%)	5 (0.5%)	1,067 (100%)	228 (9.6%)	2,149 (90.4%)	2,377 (100%)	2 (0.1%)	1,352 (99.9%)	1,354 (100%)
1982-1983	1,216 (62.0%)	745 (38.0%)	1,961 (100%)	948 (99.2%)	8 (0.8%)	956 (100%)	211 (9.5%)	2,016 (90.5%)	2,227 (100%)	13 (1.0%)	1,342 (99.0%)	1,355 (100%)
1983-1984	1,288 (66.1%)	660 (33.9%)	1,948 (100%)	930 (97.2%)	27 (2.8%)	957 (100%)	188 (9.4%)	1,821 (90.6%)	2,009 (100%)	75 (5.6%)	1,270 (94.4%)	1,345 (100%)

	Manhattan Voc/Tech			Graphic Communications Arts		
	Male	Female	Total	Male	Female	Total
1979-1980	1,421 (97.4%)	38 (2.6%)	1,459 (100%)	1,361 (74.9%)	455 (25.1%)	1,816 (100%)
1980-1981	1,237 (97.6%)	30 (2.4%)	1,267 (100%)	1,146 (68.2%)	534 (31.8%)	1,680 (100%)
1981-1982	1,240 (97.6%)	31 (2.4%)	1,271 (100%)	1,093 (66.4%)	552 (33.6%)	1,645 (100%)
1982-1983	970 (96.3%)	37 (3.7%)	1,007 (100%)	871 (64.7%)	476 (35.3%)	1,347 (100%)
1983-1984	715 (96.9%)	23 (3.1%)	738 (100%)	1,002 (64.1%)	561 (35.9%)	1,563 (100%)

APPENDIX A (continued)

QUEENS	Aviation			Queens Vocational			Thomas Edison			STATEN ISLAND Ralph McKee		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
1979-1980	2,764 (99.1%)	26 (0.9%)	2,790 (100%)	640 (48.9%)	699 (51.1%)	1,309 (100%)	2,432 (98.3%)	41 (1.7%)	2,473 (100%)	1,119 (82.5%)	237 (17.5%)	1,356 (100%)
1980-1981	2,706 (98.8%)	32 (1.2%)	2,738 (100%)	682 (51.5%)	643 (48.5%)	1,325 (100%)	2,371 (97.6%)	59 (2.4%)	2,430 (100%)	1,089 (82.5%)	231 (17.5%)	1,320 (100%)
1981-1982	2,667 (98.3%)	46 (1.7%)	2,713 (100%)	629 (51.5%)	592 (48.5%)	1,221 (100%)	2,278 (97.4%)	60 (2.6%)	2,338 (100%)	1,035 (84.1%)	195 (15.9%)	1,230 (100%)
1982-1983	2,345 (98.0%)	48 (2.0%)	2,393 (100%)	469 (46.9%)	532 (53.1%)	1,001 (100%)	1,958 (97.4%)	52 (2.6%)	2,010 (100%)	980 (85.4%)	167 (14.6%)	1,147 (100%)
1983-1984	2,235 (97.2%)	65 (2.8%)	2,300 (100%)	533 (51.2%)	508 (48.8%)	1,041 (100%)	1,905 (94.4%)	114 (5.6%)	2,019 (100%)	1,122 (84.6%)	204 (15.4%)	1,326 (100%)

TOTAL ENROLLMENT

1979-1980			1980-1981			1981-1982		
Male	Female	Total	Male	Female	Total	Male	Female	Total
24,818 (66.1%)	12,722 (33.9%)	37,540 (100%)	24,037 (65.1%)	12,906 (34.9%)	36,943 (100%)	23,559 (65.0%)	12,704 (35.0%)	36,263 (100%)

1982-1983			1983-1984		
Male	Female	Total	Male	Female	Total
20,367 (62.7%)	12,142 (37.3%)	32,509 (100%)	20,834 (63.1%)	12,182 (36.9%)	33,016 (100%)

APPENDIX B
SUMMARY OF PROPOSED VOLUNTARY COMPLIANCE PLAN FOR THE CENTRAL DIVISIONS OF THE NEW YORK CITY BOARD OF EDUCATION
FEBRUARY 1984

Enrollment

- The Office of Public Affairs will produce two 30-second public service announcements for radio and television for students preparing to make high school choices.
- The Office of the Chief Executive for Instruction will conduct a citywide slogan contest to promote "nontraditional" enrollments in vocational high schools.
- The Bureau of Educational and Vocational Guidance will provide non-sexist guidance for prospective students and their parents by scheduling a guidance articulation week for elementary and junior high students and their parents and by presenting a half-day parent workshop.
- The Bureau of Educational and Vocational Guidance will take steps to eliminate sex discrimination in guidance practices and materials by (1) developing a materials packet for National Career Guidance Week (2) sponsoring a citywide materials and exhibit fair on non-biased print and non-print materials (3) developing a pilot edition of a sex equity counseling kit (4) rewriting the articulation manual "Quest for Success" and developing a Spanish edition (5) including a section on sex-fair counseling in three bureau newsletters and (6) conducting one workshop to train supervisors of guidance and junior high counselors to promote access to "nontraditional" vocational programs.
- The Chancellor's Office will distribute a memorandum outlining steps to encourage students to select high schools without regard to sex bias.
- The High School Division will improve the admissions system by (1) targeting the under-represented sex in unscreened program applications (2) modifying the selection criteria for screened programs and (3) evaluating test and interview procedures for screened programs.
- The High School Division will improve services for special education students by integrating their admission into the automated procedure and by providing training for special education counselors.

Facilities

- The Division of School Buildings will alter sex-biased school engravings and increase sanitary facilities (restroom facilities and locker rooms including toilets and showers) in all cited schools to accommodate at least 25% of "nontraditional" students.

Environment

- The Chancellor's Office will distribute a memorandum mandating sex equity training for all local equal opportunity coordinators (LEOCs).
- The Office of Equal Opportunity will revise the grievance procedure and follow up on apparent/alleged civil rights violations.
- The Office of Equal Opportunity will conduct a training program for at least 50 LEOCs and provide a workshop for supervisors and administrators on the role of LEOCs.
- The Office of Equal Opportunity will offer a presentation on Title IX, civil rights law and the Board of Education's grievance procedure for parents, students and staff.
- The Office of Funded Programs will add an equity assurance to all written agreements for student referral or assignment in cooperative, work study or apprenticeship programs.
- The High School Division will modify the application for the cooperative education and training opportunities programs.
- The High School Division will request $50,000 to modify sex-biased printed materials used in vocational courses.
- The Division of Personnel will require an adequate number of females in candidate pools before selection.
- The Division of Personnel is developing plans to encourage qualified females to apply for administrative/supervisory positions and to increase the underrepresented sex within the total administrative/supervisory staff of cited schools.
- The Division of Personnel will develop procedures to identify female teachers with potential for promotion.

Monitoring/Evaluation

- The Office of Funded Programs will assist in monitoring efforts by providing programmatic relevant data such as enrollment data broken down by sex; success and failure of efforts to meet objectives; and implications for future programs.

- The Office of Funded Programs will monitor all VEA programs for consistency with Title IX objectives.

APPENDIX C

PERCENTAGE OF FEMALE TEACHERS AND FEMALE STUDENTS IN NEW YORK CITY'S VOCATIONAL/TECHNICAL HIGH SCHOOLS*

1981-1983

School	1981-1982		1982-1983	
	% Teachers	% Students	% Teachers	% Students
George Westinghouse	5.0	5.3	5.7	12.8
Automotive	9.6	0.1	9.2	0.2
William E. Grady	10.8	1.9	14.8	3.3
East New York	13.0	3.3	11.8	4.8
Aviation	15.0	1.7	14.4	2.0
Chelsea	15.4	0.5	14.6	0.8
Alfred E. Smith	16.9	0.0	15.9	0.7
Alexander Hamilton	19.0	10.1	22.7	11.5
Samuel Gompers	20.3	5.3	21.3	9.8
Graphic Communication Arts	24.3	33.6	22.9	35.3
Manhattan Vocational/Technical	25.4	2.4	21.2	3.7
Thomas Edison	26.2	2.6	28.3	2.6
Ralph McKee	28.0	15.9	25.0	14.6
Queens Vocational	34.0	48.5	29.8	53.1
Eli Whitney	38.3	62.6	42.9	63.2
Art & Design	41.9	38.8	41.9	38.0
William H. Maxwell	59.3	97.1	56.3	96.5
Fashion Industries	59.5	90.4	56.5	90.5
Jane Addams	61.2	98.1	57.8	98.4
Grace H. Dodge	62.5	91.4	100.0	91.9
Mabel Dean Bacon	78.3	99.9	75.3	99.0

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*Data from the Office of Student Information Services, New York City Board of Education. This table includes teachers of both vocational and academic subjects but does not include special education, library or guidance personnel. A more precise breakdown of the number of females teaching vocational classes was not available.

APPENDIX D
SUMMARY OF SEX EQUITY INITIATIVES TAKEN BY NEW YORK CITY'S VOCATIONAL/TECHNICAL HIGH SCHOOLS

Enrollment

- Designate recruiters to visit junior high schools.
- Require better representation of "nontraditional" students on brochures and recruitment teams.
- Revise recruitment presentations to include demonstrations by members of the school's "nontraditional" population.
- Schedule introductory "hands-on" occupational workshops for prospective students and junior high school guidance counselors.
- Schedule open houses with tours of the school and shop classes.
- Develop crossover programs to entice students into "nontraditional" schools.
- Include parents and guidance counselors in sex equity activities.
- Review screening procedures to eliminate sex bias.
- Offer special encouragement for "nontraditional" students through pre-school events and meetings with other "nontraditional" students.

Facilities

- Provide interim arrangements for bathrooms and locker rooms.
- Institute safety precautions for girls in predominantly male schools.

Environment

- Improve communication procedures between the school's "nontraditional" population and its administrators through an ombudsperson or through special meetings with the principal and students.
- Provide strong leadership by setting a clear policy on sex discrimination and enforcing that policy.
- Alter classroom practices to remove sex bias.
- Encourage student groups to address harassment in the school.

- Provide staff training workshops.
- Provide athletic and non-athletic extracurricular activities for "nontraditional" students.
- Encourage "nontraditional" students who are in their senior year to enter the new personnel program.
- Provide career orientation through presentations by "nontraditional" workers and by visits to their workplaces.
- Design curriculum for required academic courses that covers issues of concern to "nontraditional" students.
- Schedule "nontraditional" students together for classes and lunch.
- Encourage "nontraditional" ninth grade exploratory assignments.
- Monitor student progress to determine the need for tutorial assistance.

Ms. SCHULZINGER. Thank you.

Over the past 5 years, FARE's activities have been guided by one priority: the elimination of institutional barriers to sex equity in education. Providing equal access to educational programs and institutions can make the difference between a life of poverty and a life of promise.

Title IX of the Education Amendments of 1972 is the only Federal law against sex discrimination in education. Since its passage 13 years ago, title IX has helped to expand educational opportunities for women and girls. For example, let us examine the vocational-technical high schools in New York City before title IX.

Many of these schools were single sex. Guidance counselors could tell female students that certain courses or schools were for boys only. High school personnel could use books, pamphlets, and films which referred exclusively to one sex to recruit new students. Admissions tests were sex biased.

Now, thanks to title IX, the situation has improved in some of the city's 10 predominantly male vocational high schools. Recruitment brochures show pictures of young women and men working together, and sometimes text is added specifically to encourage young women to apply. Principals have provided assistance to teachers through staff training in sex equity workshops. There are coed athletic teams and extracurricular activities.

Clearly, the passage of title IX has begun to improve the status of female students in New York City. However, the effort to remove sex discrimination from schools must continue because implementation and enforcement of the law has been, at best, sporadic.

These barriers were documented in FARE's latest publication, "Inch by Inch: A Report on Equal Opportunity for Young Women in New York City's Vocational High Schools." We found that training opportunities for young women remain extremely limited. Most female students are enrolled in five vocational high schools which offer training for stereotypically female jobs.

In contrast, young women represent only 7.6 percent of the total enrollment in the 10 schools which offer training for traditionally male jobs. Even in the few vocational schools with a more even balance between male and female students, boys are overwhelmingly found in high technology programs while girls prepare to be stenographers and dental aides.

Furthermore, female students enrolled in traditionally male schools report that they feel unwelcome and uncomfortable in the traditionally male schools. Consider the following recent statements by female students:

> After four years in the school, if a teacher asks me to go on an errand to a classroom in the basement, I never go alone.
>
> When I first came here, I was so frightened in the hallways that I always walked with my head down. I was constantly getting lost and arriving late to class.

And a third young woman:

> I really like getting my hands dirty working on cars, but my shop teacher won't let me do some of the work the boys get to do because he is afraid that I will get hurt.

Clearly, these young women are made to feel that they do not belong, and this treatment sends a clear message to other girls who might want to apply. As one female student said: "The boys try to run you over until you get so tired you don't even want to come to school any more." She noted that many girls respond by skipping classes and eventually leaving school.

There is still an urgent need for the Federal Government to prohibit sex discrimination in schools. While the progress made by some New York City vocational high schools to address these inequities deserves recognition, most of them still have much to do.

It is important to note today that in schools where opportunities for female students have improved, all aspects of the institution were addressed: recruitment and guidance practices, admissions policies, classroom activities, athletic programs, and extracurricular offerings. The entire institution took a stand against sex discrimination; and, consequently, these schools now provide female students with the full range of educational programs to which they are entitled.

Without strong, visible enforcement of title IX, the other vocational high schools will continue to treat students on the basis of sex—not their abilities. You can improve vocational opportunities for all young people by supporting the Civil Rights Restoration Act of 1985. I urge you to do so.

Thank you very much.

[Prepared statement of Rhoda Schulzinger follows:]

PREPARED STATEMENT OF RHODA SCHULZINGER, STAFF DIRECTOR, FULL ACCESS AND RIGHTS TO EDUCATION COALITION

Good afternoon, My mane is Rhoda Schulzinger and I work at the Center for Public advocacy Research where I direct the full Access and Rights to Education (FARE) Coalition. FARE is a group of thirty organizations and individuals throughout New York City who are concerned with sex equity in education and employment training programs. I am very pleased to have the opportunity to speak with you today to urge your support for the Civil Rights Restoration Act of 1985.

Over the past five years, FARE's activities have been guided by one priority: The elimination of institutional barriers to sex equity in education. This priority recognizes the crucial connection between providing equal opportunities for students in the classroom and achieving full potential later in life. the number of women who are responsible for their own economic welfare and for that of their children continues to increase rapidly. At the same time, women remain locked into low-paying, dead end jobs. As a result, two out of three poor adults are women. Providing equal access to educational programs and institutions can make the difference between a life of poverty and a life of promise.

Title IX of the Education Amendments of 1972 is the only federal law against sex discrimination in education. It covers both students and employees in all federally-assisted education programs and activities. It bars discriminatory policies in academic and extracurricular activities, counseling, physical education, athletics and both staff and student employment.

Since its passage thirteen years ago, Title IX has helped to expand educational opportunities for women and girls. For example, let us examine the vocational/technical high schools in New York City before Title IX:

Many of these schools were single-sex.

Guidance counselors could tell female students that certain courses or schools were "for boys only".

High school personnel could use books, pamphlets and films which referred exclusively to one sex to recruit new students.

Admissions tests could require mastery of information which was often unfamiliar to young women and not proven necessary for successful program participation.

Now, thanks to Title IX, the situation has improved in some of the City's ten predominantly male vocational high schools:

Recruitment brochures show pictures of young women and men working together and sometimes text is added specifically to encourage young women to apply. Other schools revised their audio-visual recruitment materials or discontinued them if they were sex-biased.

Principals have provided assistance to teachers through staff training in sex equity workshops.

Schools have organized coed teams or all-female teams in softball, handball, track and tennis. Staff are working to ensure that school clubs and organizations are coed. A few schools appointed an ombudsperson for female students to discuss their problems and at other schools, there are monthly meetings for young women or periodic meetings with the principal. At the same time, some schools are working with the male students to facilitate their social adjustment to a coed population. At one school, a pregnancy prevention program at the school includes classes for boys on sexuality and responsibility.

Clearly, the passage of Title IX has begun to improve the status of female students in New York City. However, the effort to remove sex discrimination from schools must continue because implementation and enforcement of the law has been—at best—sporadic. Despite Title IX, women and girls still face institutional barriers to sex equity.

These barriers were documented in FARE's latest publication "Inch by Inch: A Report on Equal Opportunity for Young Women in New York City's Vocational High Schools." We found that training opportunity for young women remain extremely limited. Most female students are enrolled in five vocational high schools which offer training for stereotypically female jobs such as cosmetology, health assistance and clerical programs. In contrast, young women represent only 7.6% of the total enrollment in the ten schools which offer training for traditionally male jobs. Even in the few vocational schools with a more even balance between male and female students, boys are overwhelmingly found in high technology programs while girls prepare to be stenographers and dental aides.

Despite the increased enrollment of female students, they report that they continue to feel unwelcome and uncomfortable in the traditionally male schools. Consider the following recent statements by female students:

"After four years in the school, if a teacher asks me to go on an errand to a classroom in the basement, I never go alone."

"We have one girls' bathroom in the school and I never use it."

"When I first came here, I was so frightened in the hallways that I always walked with my head down. I was constantly getting lost and arriving late to class."

"I really like getting my hands dirty working on cars, but my shop teacher won't let me do some of the work the boys get to do because he's afraid that I'll get hurt."

Clearly these young women are made to feel that they do not belong and this treatment sends a clear message to other girls who might want to apply. As one female student said "The boys try to run you over until you get so tired you don't even want to come to school anymore." She noted that many girls respond by skipping classes and eventually leaving school.

Sex discrimination in eleven of the City's vocational high schools and at the Central Board was investigated by the New York State Education Department in conjunction with the Office for Civil Rights of the U.S. Department of Education. As a result, in November 1983, the State issued the most thorough findings of non-compliance ever released in the country. In response to these findings, the Board of Education has spent over a year developing a Voluntary Compliance Plan. This first investigation by the State Education Department was followed by a second one which covered another seven schools and again, the Central Board. Although the official Letter of Findings has not yet been released, the Department indicates that similar extensive Title IX violations are cited.

These violations are not limited to New York City. FARE's data indicates that this pattern is repeated throughout New York State where in 1983-84, ten of the major 50 secondary vocational programs are over 90% male. These training programs include electrical occupations, aviation and technical electronics. In contrast, of the 50 major programs, young women represent over 90% of the students enrolled in four programs: medical assisting, secretarial studies, practical nursing and cosmetology.

Furthermore, FARE Coalitions in New York State's other major four cities—Buffalo, Rochester, Syracuse and Yonkers—uncovered similar patterns of harassment, sex-biased counseling and discriminatory classroom practices. These practices range from simply ignoring female students in class to outright sexual harassment by teachers.

Clearly, there is still an urgent need for the federal government to prohibit sex discrimination in schools. While the progress made by some New York City vocational high schools to address inequities deserves recognition, most of them still have much to do. It is important to note that in schools where opportunities for female students have improved, all aspects of the institution were addressed: recruitment and guidance practices, admissions policies, classroom activities, athletic programs and extracurricular offerings. The entire institution took a stand against sex discrimination and consequently, these schools now provide female students with the full range of educational programs to which they are entitled.

Without strong, visible enforcement of Title IX, the other vocational high schools will continue to treat students on the basis of sex and not on the basis of their interests and abilities. You can improve vocational opportunities for all young people by supporting the Civil Rights Restoration Act of 1985. I urge you to do so. Thank you very much.

Mr. EDWARDS. Thank you very much, Ms. Schulzinger.

Our next witness is Mr. Charles MacKenzie, president of Grove City College, Grove City, PA. Grove City is sort of the eye of the hurricane. We are very grateful that you came to give the picture and your views on Grove City.

We want to be very fair in all of this. It is very valuable to have you here. We appreciate it very much.

Mr. MACKENZIE. Thank you, Mr. Chairman.

It is interesting to me that you have come from northern California, because I also came from northern California, San Mateo, where I served on the Human Relations Commission for several years.

I appreciate this opportunity to speak to you. I represent Grove City College, a 109-year-old school enrolling about 1,100 women and 1,100 men. Grove City College does not discriminate. No one has charged us with discrimination. We abhor discrimination. In 1978, even HEW's own administrative law judge acknowledged there was no hint of discrimination at Grove City College.

Why, sir, when we take no Government money and do not discriminate, has the Federal Government put us through 8 tortuous costly years of litigation seeking to impose jurisdiction over us? Could it be that the Government doesn't want any college independent of funding and control? We are fiercely independent, and we are different. We want no wasteful, inefficient, costly Government interference, and so we accept no Federal moneys.

We offer quality education in the liberal arts and sciences at remarkably low cost—$5,000 for a full year's room, board and tuition. We pay faculty salaries above the 90th percentile, well above national averages. We have no tenure program, no debt, no coed dorms; a very beautiful campus, a required chapel program, about three applicants for each student opening. And we do not discriminate solely because discrimination is wrong.

Our college is different. I remind you, freedom and diversity have helped to make American higher education the envy of the world. Yet, the Government tried to take jurisdiction over Grove City using the argument that we are, quote, "recipients of Federal money," solely and simply because some of our students as individuals receive Alternate Dispersal System Pell grants.

When the U.S. Supreme Court agreed with the Government, in order to keep free of Government interference, we announced that we no longer would enroll students with Pell grants. We did this reluctantly, feeling that the Government was creating a new form of discrimination against young Americans.

At the same time, we created a freedom fund to provide needy students with private money to replace Pell grants. So we have avoided Federal jurisdiction.

But for how long? H.R. 700, though well-intentioned, by ignoring the question of who is a recipient, leaves standing the definition that anyone who benefits, even indirectly, from Government, is a recipient and must be under Federal jurisdiction. That could mean that not only tax exemption but also funds paid directly to students, like ADS Pell grants, veterans benefits, ROTC scholarships and even guaranteed student loans, which in 1980 were exempted by a Federal district judge, could cause schools like Grove City to be classified as a recipient, and therefore subject to wasteful Federal jurisdiction.

I urge you to write strong civil rights legislation. But please enable schools like Grove City to remain free. You can, if you will accept two amendments proposed by Senator Orrin Hatch.

The first would exempt schools which receive no direct Government funds, even though their students accept Federal assistance, if those schools have not been found to discriminate. His second amendment would broaden the title IX qualification for religious exemption by allowing both religiously controlled and religiously oriented schools to be exempt.

Grove City, for example, though basing all its programs on religious values and convictions, is not controlled by a church, though it is affiliated with the Presbyterian Church. These Hatch amendments would permit a few schools, like Grove City, to remain free of Government jurisdiction as long as they do not discriminate, and as long as they take no Government funds.

For over 100 years, Grove City College has been a successful, efficient, quality private college serving the Nation well. We have broken no law. We have taken no Government money. We have not discriminated. Then, don't punish us. Please allow us to remain free to serve all people, regardless of race, creed, sex or handicap.

Thank you, Mr. Chairman.

[Prepared statement of Charles S. MacKenzie follows:]

PREPARED STATEMENT OF CHARLES S. MACKENZIE, PRESIDENT, GROVE CITY COLLEGE

Mr. Chairman and members of the Committee, I appreciate this opportunity to speak to you. I am here both as President of Grove City College, an independent college of 2200 men and women north of Pittsburgh and as a Director of the American Association of Presidents of Independent Colleges and Universities.

It has been eight years since I first began speaking out about the government's attempt to intrude into the affairs of Grove City College. During that time, I have emphasized Grove City College's commitment to principles of nondiscrimination as a matter of deep religious and moral conviction.

At the same time Grove City also cherishes its freedom and independence. It does not seek nor does it accept government funding because it does not want officials in Washington D.C. dictating its educational policies. For centuries higher education in the United States has been diverse giving the American people a choice between religious and secular educations, between liberal arts and technical emphases, between big and small, urban and rural, and private schools. The American people generally have supported such diversity and competition amongst the schools. Such variety, particularly amoung private colleges, has stimulated creativity in the free market place of ideas and has provided the public with alternatives.

But in 1985 two diverse philosophies are in contention. One philosophy assumes that people are unable to function without funding and direction from Washington, D.C. It says that government should control all of society but especially education. The other philosophy assumes that peoples are the crowing glory of creation, that they can be trusted and that they need a minimum of government support or regulation. We are concerned that in the name of Civil Rights, which we support, the Congress may inadvertently destroy both freedom and diversity in higher education by giving more and more control of colleges and universities to government.

Some idealists will say, "Tut tut, is alarmist. That government never will try to control America's colleges and universities." But the historical record should given them pause. For example in 1958, the National Defense Education Act, included these words: "Nothing contained in this Act shall be constructed to authorize any department, agency, officer or employe of the United States to exercise any direction, supervision or control over the curriculum, program of instruction, administration or personnel or any educational institution or school system." (Section 102) This statement was added to the legislation to allay the fears of many distinguished educators who warned that to accept federal funds would be to invite federal interference. Yet in spite of the warnings and in spite of this very specific promise, which still remains on the statute books, the federal government more and more has been intruding into affairs of America's colleges and universities. Inch by inch, step by step and year by year the government's involvement with higher education has grown. There is a transaction doctrine that views a series of transactions as an intergated whole and makes business accountable for going from point A to point D even through steps A to B, B to C, and C to D were individually legal. But the government has not applied this doctrine to itself. There are people in government who favor control of education from Washington, and are using incremental steps to accomplish this end. Because the government's presence on campuses has grown slowly and incrementally, people have become accustomed to it. But if the American people in 1985 could have seen how heavily government regulates education in 1985, they would have howled in protest. This erosion of our freedoms is leading us toward governmental control of education which eventually will undermine our pluralistic and democratic tradition. Then whoever controls the machinery of government will be able to shape the minds of tomorrow's citizens.

My appeal to you today is to write strong civil rights legislation but please, please enable America's private schools to retain their independence and freedom. Give us legislation which gives us both freedom and strong nondiscrimination laws. But do not let the nose of the camel in our tent for government regulation once begun can only grow and grow until it controls us, destroying our values and our freedom. If you expand government control of private education, your children and grandchildren will mourn the loss of educational freedom and choice.

I ask today why law abiding schools like Grove City College, which take not government money, which are nondiscriminatory and which never have been found to discriminate have been harassed by their government? Why when a federal law judge found that Grove City College was nondiscriminatory, did the Department of Health, Education and Welfare in 1977 try to bring Grove City under its jurisdiction by demanding that we sign its compliance form? There is no reason except that this was an attempt to bring a fiercely independent, self-sufficient college under government control.

Perhaps we were a thorn in the side of the bureaucracy because we dared to operate differently and successfully without their direction. We *are* different. Our changes for a full year's room, board and tuition are $5,000, about half what other quality, private colleges charge and only slightly higher than state universities. Our endowment income and gifts for operations are less that $200 per student per year yet we offer strong programs in the liberal arts and sciences. We operate efficiently and without waste providing an atmosphere of fiscal responsibility and stewardship for our students. We operate our college of about 1100 women and 1100 men with only 17 administrators 10 of whom, including myself, each teach one course. In addition, our distinguished faculty are paid well above national averages, about in the 90th percentile for private, four-year, comprehensive colleges. We have no tenure program though our turnover is less than at most schools. We have no debt but a well maintained, very beautiful campus currently appraised at bout $70 million which represents gifts from alumni and friends over the last 75–100 years. A sense of responsibility and stewardship are reinforced by our non-denominational chapel program. We do not allow alcohol or illegal drugs on campus. We have no co-ed dormitories and very limited intervisitation. Yet we have about three applicants for each opening we have. We are a highly successful college operating with traditional, common sense, American values and without government support or burdensome regulation. Then why did the government demand we give over jurisdiction to them? Wouldn't government bureaucrats have a field day trying to squeeze us into their inefficient mold? Wouldn't they love to change our traditional ways to make us conform to their philosophy? Wouldn't they delight in changing us because we dare to show the American public that quality, value-oriented, undergraduate education can be offered their children at low cost, in part by eliminating the waste and inefficiency which government largesse fosters.

So, Grove City College fought both for its independence and for the freedom of schools everywhere. And we continue the struggle to remain free.

We at Grove City College only wish to be left alone so we can continue to offer quality education at low cost in a value laden atmosphere. We feel this so deeply that last year when the U.S. Supreme Court issued its judgment that Grove City College, in part, should be under government jurisdiction solely because some of its students, as individuals, accepted ADS Pell grants, we notified students that we no longer would enroll students bearing Pell grants. We did this reluctantly feeling that our government was creating a new form of discrimination against young Americans. However, we chose to put in place a fund from which needy students at Grove City College can secure private money to replace Pell grants.

Having cut loose from the Pell program, we are not under the government's net of jurisdiction. But for how long? How long will a school like Grove City which accepts no government funds, not even indirectly, be able to remain independent? Given the strategy of the federal government, which is to use its unconstrained spending power to enforce its policies, who can be sure that government may not trace some federal dollar to just about every institution, using that to claim control over them? Use of federal spending power to whip everyone into line with government policy, could eventually force every college, every institution under government control. How long will any school remain truly private and free? Is all of education about to become a regulated industry? Will the Congress pass legislation which will bring all schools under debilitating and costly government jurisdiction? I remind you that the Carnegie Council has said, "the special contributions of independent colleges and universities depend in large measure on their ability to operate as automonous institutions . . . there is a danger that federal and state regualtions may go so far as to deprive those institutions of the freedom and flexibility needed to perform their mission properly."

I ask of you that you find a way to make it possible for independent colleges to remain independent, for students to have the right to choose from a variety of schools the education which suits them best and for students who need federal aid to have access to the school they choose.

I believe that S-272 and HR 700, though well intentioned, are flawed because they do nothing to safeguard colleges like Grove City and because they use government's spending power to expand federal regulation over America's colleges. They accept the Supreme Court's definition of recipient as anyone who benefits even indirectly from government. These bills do nothing to reverse the potentially limitless definition of who is a "recipient" of federal aid and invite control of institutions who conform in spirit and letter to nondiscrimination laws. They invite continued expansion of government by ignoring this issue.

I urge you to write civil rights legislation which will allow the few schools which accept no government funds and who do not discriminate to remain free of government control. I urge you to accept amendments proposed by Senator Orrin Hatch. Senator Hatch has proposed two amendments to S-272 which we believe are vital if our heritage of freedom and diversity in higher education is to be preserved. The first would exempt from federal jurisdiction under the civil rights laws those few educational institutions, like Grove City, which receive no direct assistance from the government, but whose students receive federal aid such as GI benefits or Pell Grants under non-campus based alternative disbursement systems. Under these systems, the grants are sent directly by the federal agencies to eligible students and the colleges involved have no role in the calculation or assignment of grant amounts. The amendments, however, would not allow the schools to obtain the exemption if they discriminate. Safeguards built into the Hatch Amendment would apply federal civil rights jurisdiction, under Title IX, Title VI, Section 504 or the ADA, if an institution was found to have discriminated under the numerous other federal and state anti-discrimination laws that apply irrespective of an institution's status as a recipient of federal aid.

The second Hatch amendment pertains to a re-definition of the religious exemption under Title IX. Title IX now contains a religious exemption, but it is so narrowly drawn that only those institutions legally "controlled" by a religious organization are entitled to seek an exemption through the Department of Education. Grove

City's entire educational philosophy, for example, is based on strong religious principles, but it is only "affiliated" with the United Presbyterian church and is not controlled by any religious organization. Religiously-oriented institutions of higher education having loose affiliations with particular churches should be entitled to the same protection under the religious exemption, as is provided for schools controlled by particular denominations.

It is hard for me to imagine that the Congress wishes to bring every college and university under expansive federal control. This country's private colleges have inspired superb educational quality and innovation. Private colleges account for over 70% of the institutions whose students have combined SAT scores greater than 1000. The many church-related schools have stimulated moral vision and purpose. Many of today's senators and representatives earned undergraduate degrees from private colleges or universities. In 1980, a majority of the country's corporate leaders had received degrees from private college or universities.

It is hard for me to believe that the Congress wants all colleges and universities to be directed from Washington, D.C. Most Americans agree that government is not equipped to dictate what cars, what computers, what refrigerators American manufacturers should produce. Most Americans also would agree that government is not equipped to dictate how a college should be run. It is hard for me to believe that the Congress will allow government to stifle the efficiency, quality and freedom of schools like Grove City College. It is hard for me to believe that Congress knowingly will expand government control of the diverse higher educational community which is the envy of the world and open the door to creation of a government dominated network of colleges and universities. It is my hope that you will allow some colleges like Grove City to remain free.

Free colleges like Grove City stimulate creativity, innovation and a love of freedom in American life. They challenge establishment thinking and challenge people and institutions to dare to be different. There are many ways to accomplish change in society. To allow various strategies for social change to operate is creative, and produces alternatives to bureaucratic control. Allowing some of us, to remain free and to practice nondiscrimination on the basis of conscience will preserve in our society the choice and texture which are essential to the freedom of the whole society.

For over one hundred years, Grove City College has ben a successful college serving the nation well. We've broken no law. We've not discriminated. Then don't punish us, don't enslave us. Let us be free to love and serve all people.

Mr. **Edwards**. Thank you very much, Dr. MacKenzie.

Our last member of the panel to testify is Dr. Sheldon Hackney, president of the great University of Pennsylvania here in Philadelphia.

Dr. Hackney.

Mr. **Hackney**. Mr. Chairman and members of the Judiciary and Education and Labor Committees, I am Sheldon Hackney, president of the University of Pennsylvania. If you will allow me one bit of institutional pride, I should point out this is the institution founded by Benjamin Franklin, so it is delightful to have the representatives from Gompers High in New York here, Benjamin Franklin City, and discover one of his wise sayings is the motto of that school. Appropriate.

I am happy to be here today to testify on behalf of the university and its 22,000 students and 16,000 employees, regarding a matter of utmost importance to our university and to the Nation: The elimination of discrimination on the basis of sex, race, age, or disability in educational institutions.

It is most fitting that you have called this hearing here in Philadelphia in the shadow of Independence Hall, the venue of our Declaration of Independence and Constitution, upon which are based the rights, freedoms, and opportunities upon which our laws give life.

Let me emphasize that the University of Pennsylvania's commitment to equal opportunity is deep and, in some respects, far broader than legislative requirements. Indeed, I would like to believe that were all Federal civil rights legislation to be repealed, our nondiscriminatory practices would not change a bit and our dedication to these ideals would not slacken; in part, because our own commitment is so deep and great. We believe the civil rights laws should remain comprehensive in their scope.

I will be brief, for our position on the legislation under consideration, the Civil Rights Restoration Act of 1985, is quite simple: we support it. We believe that it is fully appropriate that your committees, and your counterparts in the Senate, act promptly in your consideration of H.R. 700 and S. 431, which will clarify the application of title IX of the Education Amendments of 1972, title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and section 504 of the Rehabilitation Act of 1973.

Through the enactment and enforcement of these laws, educational institutions have made substantial progress toward the eradication of discrimination. Passage of the Civil Rights Restoration Act of 1985 will signify a national rededication to the protection of civil rights in our schools, our colleges and universities, and will remove a potential obstacle in the path of progress toward full equal opportunity—the legacy of last year's Supreme Court decision in *Grove City College* v. *Bell*.

Prior to the *Grove City* decision—and here I refer only to the decision, not to the institution itself—the prevailing belief was that the receipt of Federal assistance, in the form of student aid or direct assistance, extended the coverage of title IX and other nondiscrimination statutes to encompass all of an institution's programs and activities. The Supreme Court, in the *Grove City* decision, narrowed what we believed to be the broad scope of title IX by stating that the law reached only to the "program or activity" receiving Federal financial assistance; in this case, the student financial aid office at the college.

Although I do not suggest that most or many institutions of higher education have seized upon this opportunity to engage in discriminatory practices, the *Grove City* precedent is nevertheless most troubling. Technically, it would allow an educational institution to step backwards, to renege on the promise of equal opportunity, if it discriminated in programs or activities not subject to Federal aid.

If, for example, department X at ABC University did not receive Federal aid, the department could, the decision suggests, discriminate against women in hiring and in the classroom. While, as a nonlawyer, I hesitate to comment on the legal aspects of the *Grove City* decision, the potential public policy results—including the message it sends to the citizenry—are frightening.

The *Grove City* decision will also cause considerable enforcement difficulties for the Office of Civil Rights and for the administrative functions of institutions themselves. Whereas, prior to *Grove City*, both OCR and most institutions of higher education considered Federal assistance to a program or activity to be indivisable with respect to the whole institution, resulting in institution-wide coverage of civil rights statutes, Federal officials will now have to attempt to trace the flow of Federal funds throughout the institution.

Basically, however, we are concerned that *Grove City* opens the door to those who would step back from practices and principles which promote equal opportunity. I believe it is safe to say that some institutions around the country responded grudgingly to both the spirit and intent of the Federal nondiscrimination statutes. Without legislation to clarify the intent of Congress, it is conceivable that those who originally resisted the movement toward equal opportunity may well use this decision as a loophole to resist the continuation and extension of equal opportunity.

Let me describe for a moment one aspect of the opportunity afforded by title IX that has been particularly evident at the University of Pennsylvania. In the early 1970's, after the enactment of title IX, Penn brought its entire women's intercollegiate athletic program under the umbrella of varsity intercollegiate athletics. An institutional self-study was initiated to reaffirm our commitment to equal competitive opportunity for all student athletes.

That commitment is embodied in an athletic policy statement addressing staffing and salary equity, equipment and travel, support staff and services, and competitive opportunities. Indeed, our short-term goal, within reach, is to achieve parity between women's and men's sports programming through equal per capita expenditures of unrestricted funds.

Our commitment transcends legislation and we will continue to pursue and achieve our goals regardless of the *Grove City* decision. But how many athletic departments see *Grove City* as an opening to reduce opportunity for women? Similarly, how many departments and other programs at colleges and universities receiving no Federal financial assistance will reduce opportunities for women, minorities and others who have been victims of discrimination?

I cannot say with certainty, but the prospect of reduced opportunities is real. And unless we can confidently answer "none" to these questions, this legislation should be passed.

Again, thank you for your invitation to be here today. I would be pleased to answer any questions you may have about my statement.

[Prepared statement of Sheldon Hackney follows:]

PREPARED STATEMENT OF SHELDON HACKNEY, PRESIDENT, UNIVERSITY OF PENNSYLVANIA

Mr. Chairman and members of the Judiciary and the Education and Labor Committees, I am Sheldon Hackney, President of the University of Pennsylvania. I appreciate your invitation to me to testify today, on behalf of our University, and its 22,000 students and 16,000 employees, regarding a matter of utmost importance to the University and nation—the elimination of discrimination on the basis of sex, race, age, or disability in educational institutions. It is most fitting that you have called this hearing here in Philadelphia in the shadow of of Independence Hall, the venue of our Declaration of Independence and our Constitution, upon which are based the rights, freedoms, and opportunities to which our laws give life.

Let me emphasize that the University of Pennsylvania's commitment to equal opportunity is deep and, in some respects, far broader than legislative requirements. Indeed, were all Federal civil rights legislation to be repealed, our nondiscriminatory practices would not change and our dedication to these ideals would not slacken. In part because our own commitment is great, we believe the civil rights laws should remain comprehensive in their scope.

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Again, thank you for your invitation to be here today. I would be pleased to answer any questions you may have about my statement.

Mr. EDWARDS. Thank you, Dr. Hackney. We will have questions, but we will recess until 11 o'clock, which is about 8 minutes.

[Brief recess.]

Mr. EDWARDS. The subcommittee will come to order.

We welcome with great pleasure the gentleman from New York, Brooklyn, New York, the 12th Congressional District of the great State of New York, Major Owens.

Congressman Owens, we are delighted to have you here and do you have a statement?

Mr. OWENS. No, Mr. Chairman.

Mr. EDWARDS. Major Owens is a valid member of the Education and Labor Committee, and I recognize the gentleman from California, Mr. Martinez.

Mr. MARTINEZ. Mr. Chairman, just for the record, I have a short statement that I don't want to read, but I would like to have inserted for the record.

Mr. EDWARDS. Without objection, it will be made a part of the record.

Mr. MARTINEZ. How much time do we have, Mr. Chairman?

Mr. EDWARDS. We operate under the 5-minute rule, but you have a generous chairman.

Mr. MARTINEZ. First, I would like to ask Ms. Schulzinger if she would give me her opinion, the difference between the notion of coverage versus funding termination inherent in Orin Hatch's amendment?

Ms. SCHULZINGER. The reference to the Hatch amendment, which would provide an exemption——

Mr. EDWARDS. Can the people hear in the back?

Ms. SCHULZINGER. The reference to the Hatch amendment, which would provide exemption to those educational institutions until proof of discrimination, is troubling to me for two reasons. One, there would be no assurance for those students who enter who were trying to begin and continue their education if in fact there was discrimination, nothing would happen until they were somewhat into their educational program. I would, of course, argue that they may be prevented from studying what they would want to until that point.

Also, I think it is important to have a distinction between the coverage of the entire institution, and the very nature of pinpoint determination of funds, because title IX, as originally written, offers complete coverage throughout the institution for those students who want to enter it and there is no determination of funds until there is proof that in fact there has been discrimination, and there is obviously a large amount of due process granted the institution until that point.

I would also argue that perhaps the amount of activity required to come in and prove that degree of discrimination perhaps would be even more intrusive than what the current situation is.

Mr. MARTINEZ. Thank you.

I would like to ask—let me find my list here—I would like to ask Mr. MacKenzie if his school in fact does take advantage of any tax exemptions?

Mr. MACKENZIE. Yes, sir. Grove City College, like practically every educational institution in this country, is a tax-exempt organization.

Mr. MARTINEZ. Then my next question is, don't you feel that that tax exemption is a form of Federal subsidy?

Mr. MACKENZIE. No, Congressman Martinez, I do not.

Mr. MARTINEZ. If you are excluded from paying taxes, a certain tax, you get that tax exemption, don't those moneys go to benefit the ongoing operation of the college?

Mr. MACKENZIE. At the same time, I think it ought to be pointed out——

Mr. MARTINEZ. That is not my question. My question was, doesn't it go to helping the population of your college, the fact that you do have a tax exemption which does retain moneys for you?

Mr. MACKENZIE. It does keep down the tuition students who have to pay, yes. They would have to pay——

Mr. MARTINEZ. So it helps in your operation?

Mr. MACKENZIE. If you put it——

Mr. MARTINEZ. So it is a subsidy?

Mr. MACKENZIE. Yet, I would suggest to you, sir, that if tax-exempt status is going to be considered, the basis for bringing institutions under Federal jurisdiction, I think the Congress ought to make that well aware to the American people.

Mr. MARTINEZ. I think it is inherent to the American people that if you look at it from my standpoint and my constituents' standpoint, people who don't have to pay taxes and we at a lower level who have to pick up the tax burden because we as working people don't get to exempt $50 lunches, then we fully understand.

Mr. MACKENZIE. Are you planning to attack tax exemptions for churches also and all nonprofits?

Mr. MARTINEZ. I think there are charitable tax exemptions that are and should be exempt and there are those that should not. A tax exemption for a charity is a lot different than benefiting a particular group or class of people because that particular college chooses to deny other people. That is a lot different from a charitable deduction that goes to help primarily everybody in the community, especially the needy.

Mr. MACKENZIE. I point out, Mr. Martinez, that Grove City College does not shut out anybody that is qualified.

Mr. MARTINEZ. That would lead to my next question. Since you do not discriminate in any way, why are you fearful of the law that says you shouldn't?

Mr. MACKENZIE. We are not fearful of the law. We are simply fearful of Government interference. It is wasteful, inefficient, it is costly.

I would also like to point out to you that under the education amendments of 1972, the coordination of education intrudes into curricula areas. Our institution, for example, is firmly based on Judeo-Christian values. If we are going to have to adapt our curriculum to Federal guidelines, that means we may not be able to have a value-oriented education.

I would also like to point out, Mr. Martinez, Grove City College is a school that has for many, many years kept its charges low. We, too, are working people. Many of our students come from steelworkers' families, first and second generation families in Pittsburgh and Cleveland. I would not subscribe to your implication that Grove City College is for the elite. It is a working man's school and it has always been.

Mr. MARTINEZ. I didn't imply that. What I said was that there is a difference between those that would and those that don't.

Mr. MacKenzie. And we do not discriminate.

Mr. Martinez. That goes back to the same thing. If you have a Christian-Judeo philosophy in your college which says, "We are all God's children," there should be no discrimination at all in any way, shape or form.

Mr. MacKenzie. Absolutely.

Mr. Martinez. Do you realize by denial of people who are trying to get education and they need that Federal Pell Grant you deny them, that is a form of discrimination?

Mr. MacKenzie. And it is the only way, sir, we were able to retain our independence of Government jurisdiction.

Mr. Martinez. I still don't see how you maintain that independence, say that if you don't discriminate at all in any way, shape or form, how that gets to be a burden from the Federal Government, since you are complying anyway. See, the Federal Government passes a law. It only goes after those people that violate the law. Then it gets to be burdensome to those people, but I don't see how you equate cost and burdensomeness with just the fact that you are going to do what you say your Christian-Judeo belief says you should do anyway. I mean it doesn't make sense.

Mr. MacKenzie. And we do it. We try to live by our Judeo-Christian beliefs, nondiscrimination.

Mr. Martinez. If you believe that and are practicing that, I don't see the burden.

Mr. MacKenzie. The burden, sir, is twofold. One, we are very much concerned about indications that have been made very clear from Washington, DC and from the Congress that curriculum will be affected. The Supreme Court decision, for instance, during the 1960's, mandated that the state be value-neutral. If we are considered to be an extension of the State under Government jurisdiction, then we are going to eventually, we believe, feel the effects of that value-neutralization on our campus. That we are not willing to subscribe to.

Second, we are convinced that the costs, remember, I read in my testimony, that Grove City College offers a young person of moderate means a full year's education, room, board and tuition, for $5,000 a year. We are convinced that if Government jurisdiction and all the hoops that you have to jump through for the government bureaucracy were imposed on Grove City College, that that tuition would go up very significantly.

If I might cite one example, we, for instance, in our financial aid office, run our financial aid program with one and a half person. According to Government guidelines, we should be running that financial aid program for 2,200 students with about three or more people. Now, the ripple effect of that type of hoop, that type of jurisdiction throughout our whole institution would add to our costs, make costs jump tremendously.

We run the whole institution, Mr. Martinez, with seven administrators, most of whom teach, including myself. That is to keep the charges down. If we had to set up, expand our administrative staff in order to jump through the Government hoop, the wasteful, inefficient Government hoop, we would probably have to add at least 20 or 25 additional staff persons.

Mr. Edwards. The time of the gentleman has expired.

Mr. MacKenzie. All these are reasons that we are not willing to accept Government jurisdiction.

Mr. Edwards. The gentleman from Michigan, Mr. Crockett.

Mr. Crockett. Thank you, Mr. Chairman.

Mr. MacKenzie, let me see if I understand what your position is. At the time the Civil Rights Act was enacted, it was an attempt on the part of the Federal Government to aid people who desired to go to institutions like yours and, at the same time, make sure that there was no discrimination because of race, color, or other factors. And so in effect, the Government gave a grant of money to schools like your school conditioned on whether they were going to accept these students, complying with these statutes.

Now, you have no quarrel with that, because you have a choice. You could either accept those students or not accept those students. You elected to accept the students, and that is what brought you under the provisions of the Civil Rights Act.

Mr. MacKenzie. Mr. Crockett, may I respond that we participated in the Pell Grant Program through the alternate dispersal system, whereby the Government gave its grants to students as individuals. Of course, would take those grants to any school they chose. We were happy to have them come to us, but it was not the Pell grant money coming directly to the institution, sir.

Mr. Crockett. But that is no longer an issue. That was the argument made by your attorneys, I take it, to the Supreme Court and the Supreme Court overruled that. The Supreme Court said that to the extent that you accepted students who were beneficiaries of Pell grants, you were the beneficiary of Pell grants.

Mr. MacKenzie. Yes, sir.

Mr. Crockett. Subsequent to that, you decided you would no longer accept any more students; is that right?

Mr. MacKenzie. No longer accept students who brought Pell grants.

Mr. Crockett. That is right.

Mr. MacKenzie. There was an attempt, sir, to try—

Mr. Crockett. So as of now, title IX of the Civil Rights Act does not apply to Grove City?

Mr. MacKenzie. Yes, sir.

Mr. Crockett. Is that correct?

Mr. MacKenzie. That is our understanding.

Mr. Crockett. That is because you have completely changed. And so my first question is, how are you being hurt by either title IX, or by the provisions of House bill 700?

Mr. MacKenzie. I would like to say that presently, the only hurt so to speak is the necessity to have to secure private money to replace the Pell money, which we have done. At the present moment, our understanding is that we are not under Federal jurisdiction, but our concern is that with H.R. 700, since H.R. 700 assumes, it seems to us, that anyone is a recipient who receives assistance even indirectly from the Government, then eventually that would touch us, for instance, not only on the Pell grant situation, but veterans' benefits, ROTC scholarships, or even conceivably guaranteed student loans, which have been exempted by a Federal judge but the Congress may overturn that.

Mr. CROCKETT. My time is limited, so let me ask you another question.

As I understood your testimony, particularly on page 4, it is your position that it is all right to have title IX, or House bill 700, as long as you make it applicable to State-supported institutions like the University of Pennsylvania, and not make it applicable at all to private schools. In other words, the Federal Government can insist on observance of constitutional rights as far as public schools are concerned, but you do not feel it should do so with respect to private schools.

Isn't that your basic position?

Mr. MACKENZIE. If I may qualify that, sir.

In the case of the private schools, we do support penalty against private schools that do discriminate. In other words, discrimination is against the law, as we understand it, and we do not support discrimination.

But our understanding would be that the private sector, if it discriminates, has broken the law.

Mr. CROCKETT. What you are saying is, we should trust private schools and leave it to them to voluntarily comply. But with respect to public schools, the Federal Government should step in and make it mandatory.

Mr. MACKENZIE. Because they are federally supported.

I should say that, however, it is our conviction that any private school that discriminates should suffer penalty.

Mr. CROCKETT. Dr. Hackney, what do you think about that distinction?

Mr. HACKNEY. Well, as I tried to indicate, I would be more comfortable with a broad coverage, certainly within the institution, to all the programs. It would be more consistent.

Mr. CROCKETT. Thank you, Mr. Chairman.

Mr. EDWARDS. The gentleman from New York, Mr. Owens.

Mr. OWENS. No questions, Mr. Chairman.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hayes.

Mr. HAYES. I just want to make a brief statement and ask one question, Mr. Chairman. I will try to stay within the timeframe you have set aside for us. I know we have an awful lot of witnesses yet to follow.

I just have to commend Miss Reeves for her progress. I was moved by it—your progress, your academic achievement that you have made so far, in spite of the economic disadvantages.

I would like to suggest to you that you continue to meet your challenge in a fashion which you now approach it, being a junior—I think you indicated—in a school called Samuel Gompers. That name, within itself, indicates something because of its labor background. And I come from labor. And I think the trade union movement has done a lot to remove some vestiges of discrimination, although not enough.

Being among those male students, it might be quite a challenge for you. You are trying to fit yourself into today's life and tomorrow's life.

We are finding out in other hearings, not directed toward civil rights per se, that there is a companionship between education and poverty. There is no question about it. Without an education, your chance of obtaining any kind of job or good income position is virtually nil.

I just want to raise with Ms. Schulzinger—I think that is your name——

Ms. SCHULZINGER. Close enough.

Mr. HAYES. You have outlined massive changes in New York City's vocational high schools and their treatment of girls, which you attributed to title IX.

Do you believe these advancements which you outlined would be ended or curtailed if the Congress did not pass H.R. 700?

Ms. SCHULZINGER. Yes, I do. As we speak, the New York City public schools are trying to respond to a very extensive compliance review that was completed back in 1983. The board of education is still attempting to complete a voluntary compliance plan which will indicate the steps that it will take not only within the individual cited schools and divisions of the central board of education, but it has a mandate to take affirmative steps throughout the entire public school system in New York City to correct sex discrimination.

It is a tremendous undertaking, without the continued enforcement of this law, I believe, that we will not make the progress that we need in the city for the youngsters.

Mr. HAYES. Is the board of education, the administrators of the school system of New York, actively engaged in any kind of campaign to solicit the massive delegation from New York to make sure they are behind the kind of thing we talk about here, as relates to H.R. 700? Because I think it may be needed.

I just want to take inventory—I don't think we should take anything for granted—to make sure we have support from our friends as well as those who may be leaning in other directions.

Ms. SCHULZINGER. I haven't had the honor of meeting Congressman Owens, but I am glad he is here.

Mr. HAYES. Oh, there is no question where he stands. There may be others of concern.

Ms. SCHULZINGER. It is my understanding there is no communication. Negotiations are occurring between the State education department and the board of education. The Office of Civil Rights particularly referred this matter, due to the extensive nature, referred to the education department.

Mr. HAYES. We have the support of the people who have appeared. I hope the gentleman from Grove City will make it 100 percent when he thinks through the thing. But if we could have the same kind of batting average among the Members of Congress, there would be no question of passage of H.R. 700.

Mr. OWENS. Would the gentleman yield for 1 second?

Mr. HAYES. I sure will.

Mr. OWENS. I want to thank you for being a broker between the Board of Education of New York City and the congressional delegation. Thank you.

Mr. HAYES. All right.

Mr. EDWARDS. Thank you.

Mr. MARTINEZ. Mr. Chairman, might I have another minute?

Mr. EDWARDS. Yes, of course. We are going in rotation. We have plenty of time. Go ahead.

Mr. MARTINEZ. Earlier, I had wanted to ask—Ms. Gore, is it?—you pointed out the enrollment in the school that you are at now went from I think 6 original enrollees to something like 500 of 1,000—50 percent. And earlier, Ms. Schulzinger had indicated the difficult time that the girls had in a majority male school; discouragements that they were confronted with caused them to drop out, in many cases.

In your school where there now is that equal enrollment, what are the conditions like for the girls there?

Ms. GORE. Well, the larger the number of girls you have in the situation, the better the conditions get. It is always worse for the people in the beginning. And as they become more equal in population, their difficulties decrease enormously. There is far more acceptance by the male students, by the teachers.

Mr. MARTINEZ. Realizing you will always have those few that won't accept anything different from what they knew originally, by and large, though, you could say that most have accepted it and that there is parity there.

Ms. GORE. Yes, I do. I think we have a very good situation. As a matter of fact, I want to express the fact that the girls lead the student government, and did actually when they first came in. In about the second year, the girls were elected to the consultative council of the school and were influential in school policy from the very beginning, although at that point there were about 20 or 30.

Mr. MARTINEZ. That is great—which leads me to the conclusion that the problem is that where these ladies are not accepted is because there isn't sufficient number. That is where you really eliminate discrimination.

All my life I have heard people that say, "Oh, this is going to happen. Terrible things are going to happen if we do this," as we heard earlier; terrible things. Well, you know, I keep remembering back when I was a little kid. I heard President Roosevelt say the only thing we have to fear is fear itself. And that is so damn true even today in most places that are trying to deny and discriminate against other people and not allow them equal access that this Constitution really provides.

I would say to them, "Hey, stop. Get your heads out of the sand. The sooner you change things, the better it is going to be." Because every situation where I have heard those people so fearful of what these changes were going to bring about that were so devastating, it really never happened. In fact, everything got better except for those people that have the negative attitude, that don't want to change because they are fat and comfortable where they are at, and they are just fearful that that change will affect them—not anybody else—because for 90 percent of the people it is good change. It does good for more people.

We are a better country for it. I wish people would remember that.

Ms. SCHULZINGER. I am meeting with the chancellor of the New York City Public School System in 2 weeks. If you would like to join me for that meeting, I would be delighted to have your company, because I would like to talk to him about the nine other traditionally male schools that have not taken the steps Samuel Gompers has taken.

Mr. **Martinez**. Let's go.

Mr. **Edwards**. The subcommittee would like to hear about that, too.

Dr. Hackney, if H.R. 700 is not passed then if the University of Pennsylvania had a different attitude than it has now—it has a very commendable attitude on equality and fair play now—but if the university got a president and board of governors that decided that they didn't care any more and there was discrimination against young women in the English department, and you couldn't trace Federal aid there, then the discrimination could go right on; couldn't it?

Mr. **Hackney**. That is true, yes.

Mr. **Edwards**. Or you would have to have half a dozen different lawsuits. You would have to sue the English department, the Spanish department and the literature department, history department, and just go on and on. And that would be very unwieldy. It just wouldn't work.

Mr. **Hackney**. Yes; it would be very confusing and very expensive to do that for both the Government and the institution.

Mr. **Edwards**. And there could be discrimination in some of the departments where there was no Federal involvement. And there is nothing in the world that could be done about it.

Mr. **Hackney**. That is true. I worry a lot, I guess, about athletic programs in particular where the women are only now beginning to have equal opportunity.

I don't want to cast dispersions upon all of higher education. But the fact is that we are operating under very stringent resource limitations, and without title IX and without the other antidiscrimination statutes the temptation to cut back funds and underserve some groups in order to save money is very strong.

What I think H.R. 700 does is to remove that temptation, if you will.

Mr. **Edwards**. Thank you.

Now, Dr. MacKenzie, the people running Grove City are very good people. It is very clear that they are. You don't discriminate. You go out of your way not to discriminate, and you are really fighting for a principle here of nongovernmental interference. We understand that and we respect it.

It is hard for some of us to understand how it is going to work, however. Again, if Dr. MacKenzie leaves and somebody else gets in there—and you are still—we will say you are still getting students with Federal aid—then you should—the Government should perhaps step in if there is discrimination.

How do you know what is going to happen in your college tomorrow? If you want to be exempted, how do you know discrimination is not going to start tomorrow?

Mr. **MacKenzie**. First, sir, if I may respond, the constituency at Grove City College is committed to nondiscrimination. It is not merely one administration or another.

Second, it is our conviction also that if we are found to discriminate on any of the bases that have been mentioned, then we believe we should be charged and support should be withdrawn—support for our students, that is, not for the institution.

Mr. **Edwards**. But you can't be charged if your position is upheld by Congress. If the *Grove City* decision remains in force, new people can come along at your college and there can be discrimination in a number of departments, and the discrimination can't be reached.

Mr. **MacKenzie**. Yes. It is our understanding, sir—I am not attorney, but it is our understanding that if we are guilty of discrimination, that any individual can make that charge, that allegation. If it is sustained, then the Government would have every right, we believe, to withdraw Pell grants or any assistance that may even indirectly be reaching the institution.

Mr. **Edwards**. I yield to Mr. Hayes.

Mr. **Hayes**. I am going to ask, to satisfy my curiosity, what is the percentage of your school that are blacks and women?

Mr. **MacKenzie**. On the women's issue, it is about 50-50—1,100 women, 1,100 men, approximately. On the minority issue, we are having trouble. Frankly, part of the problem is the misrepresentations that have been made by government groups about our advocating discrimination, which we do not. We make wholehearted efforts to go out and recruit blacks. We solicit your help.

We have, as far as I know, at the moment only about 12 or 13 blacks on campus. We have a little higher percentage of Spanish speaking. But our problem is that, for these 8 years we have been in this fight, everybody seems to have tried to imply and suggest that we are for discrimination, which we are not.

We advertise in black newspapers. We send recruiters to black high schools. We would solicit your help to recruit young blacks to our campus. Those who have come have done superbly, and done well.

Mr. **Hayes**. Taking a young student like the young lady sitting here as part of this panel——

Mr. **MacKenzie**. We would love to have her.

Mr. **Hayes** [continuing]. Coming from an economically disadvantaged family, in order to enter your school she may need financial help from the Government.

You say, in effect, she couldn't come in.

Mr. **MacKenzie**. Yet, we have been compelled to do that, sir, by virtue of the fact that the Government says if we take Government assistance or our students do, like a Pell grant, that then we must be under Government jurisdiction.

Freedom means a great deal to us. We are trying to balance our love of freedom with our love——

Mr. **Hayes**. You can say that again. Freedom means a great deal to all of us.

Mr. **MacKenzie**. Yes, sir.

But we are trying to balance that with the fight against discrimination.

Mr. **Hayes**. What percentage of your student body is handicapped?

Mr. **MacKenzie**. We probably have—I don't have the exact figure at the moment. I would say we probably have maybe 15 to 20 handicapped students on campus—handicaps of one sort or another.

Mr. **Edwards**. Dr. MacKenzie——

Mr. Hayes. Could you maybe provide that for the record, as to the exact number?

Mr. MacKenzie. Yes, sir. I would be happy to.

Mr. Edwards. Without objection, it will be received.

Mr. Hayes. Thank you, Mr. Chairman.

Mr. Edwards. Dr. MacKenzie, we do respect your views. We are grateful that you came. However, you are subject to Federal civil rights laws. At Grove City, you can't discriminate on the basis—in employment—on the basis of race or sex.

Mr. MacKenzie. Correct.

Mr. Edwards. But that hasn't brought down all of these terrible things that you have referred to—Government supervision.

Mr. MacKenzie. Those are matters of employment, sir. But when you get into matters of the academic curriculum, this is the type of thing we have been concerned about. For example, we have received directives, I believe it was in 1977, that affected our curriculum.

We are concerned that our Judeo-Christian values, which are the core of our institution—we are concerned that we are going to be told, if the Government claims and receives jurisdiction over us, that the neutral government will eventually dictate that we must eliminate our value-oriented Judeo-Christian emphasis.

Mr. Edwards. Can you be specific about that? What threatening instruction arises?

Mr. MacKenzie. We received notification—I don't know what ever happened to it because there was a howl of protest, as I recall, across the country from many schools—not just Grove City but many schools--who treasure the Judeo-Christian tradition—when notification was sent out that the schools would be subjected to study and scrutiny on the basis of their value orientation. That alarmed many of us across the country that our uniqueness, as far as our academic program, could be jeopardized if Government ever seizes jurisdiction over some of the private schools that have these commitments.

Ms. Schulzinger. Mr. Chairman, may I?

Mr. Edwards. Ms. Schulzinger.

Ms. Schulzinger. This is the second time Dr. MacKenzie has referred to this issue of title IX having an impact on the curriculum. For the record, I would like to state that I am not aware of any such regulations nor any court cases or any interpretation of the statute. If he has that information, I, for one, would love to see it because I do title IX work every day and I have never heard of this.

Mr. Hackney. That is true. As being the only grayhead here on the panel, anyway, I do recall some draft title IX regulations that did raise the possibility at one point of requiring institutions to survey their textbooks. That was in the draft phase. It was dropped, and I don't think there has really been a problem.

Mr. Edwards. I hope the writer was fired.

Mr. Sensenbrenner, our ranking Republican, had to leave. We don't have a Republican member here at the moment.

I recognize the associate counsel for the minority. Mr. Kiko.

Mr. Kiko. Dr. MacKenzie, I have a question: How many students receive guaranteed student loans, approximately?

Mr. MacKenzie. I believe the number is somewhere around 400 out of our 2,200 students.

Mr. Kiko. There was report language in H.R. 5490, this bill's predecessor, that said guaranteed student loans would cause one to fall under the jurisdiction of title IX. I think that was an issue at the district court, was it not?

Mr. MacKenzie. Yes, it was. And the Federal District Court in Pittsburgh ruled that guaranteed student loans were not included in the legislation.

Mr. Kiko. Do you feel H.R. 700 would overturn that court decision?

Mr. MacKenzie. I think there is a very strong likelihood that it would. I think if it were tested in the courts, it probably would be included.

Mr. Kiko. Do you feel—and this is for other members of the panel—that H.R. 700 would cause tax-exempt status to fall within the rubric of Federal financial assistance, or that it should?

Mr. MacKenzie. I think that that is one of the great dangers. I do not think it should. But I think that there are indications that that might be included under that rubric.

Mr. Kiko. Anybody else care to respond to that?

Mr. MacKenzie. Our interpretation, sir, if I may respond also, has been the guaranteed student loans—if we go the alternate dispersal route, that they should not be included as Government support, tax support of the institution, though they are Government support of the individual student. You can take that guaranteed student loan to any school.

Mr. Kiko. I have a question for Mr. Hackney.

In your testimony, you state that Federal officials will now have to attempt to trace the flow of Federal funds throughout the institution. It is my understanding that the pinpoint language in H.R. 700 has changed. But it was changed into an effort to require that the Federal Government has to follow the flow of funds before it cuts off the Federal financial assistance to a discriminatory institution.

Do you feel that—you stated that we will now have to attempt to trace the flow of funds throughout the institution.

Mr. Hackney. Yes.

Mr. Kiko. Is it your understanding that they haven't been required to before, or they won't be required to after this?

Mr. Hackney. No. The point was, without H.R. 700, if the Federal Government wants to move against discrimination in a program within an institution, the only way it—it has to establish its jurisdiction. So it has to follow the flow of funds to that program. And I think that is burdensome.

I think H.R. 700 takes away that burden by making Federal support, to any part of the institution, institution-wide.

Mr. Kiko. How often is this pinpoint language used—does anybody know?—to require the Government to trace the flow of funds? I wouldn't think that would be any more burdensome.

If it is already required in the pinpoint language, what is the difference?

Mr. Hackney. It is the *Grove City* decision that really requires that. It is not the pinpoint language.

Mr. **Kiko**. It requires what?

Mr. **Hackney**. If the *Grove City* decision stands, it says that the Federal—all of the four antidiscrimination statutes really apply to the program that receives Federal funds. In order to know whether a program receives Federal funds or not, you have to follow the funds to that program. That is what is burdensome. And H.R. 700 clears that up.

Mr. **Kiko**. So you don't feel it is burdensome to require fund cutoff for the pinpoint language?

Mr. **Hackney**. I am not familiar with your term "pinpoint language."

Mr. **Kiko**. That was a case—well, that is all right. OK.

I have no further questions.

Mr. **Edwards**. Are there other questions from members?

Mr. Martinez.

Mr. **Martinez**. Mr. MacKenzie——

Mr. **MacKenzie**. Yes, sir.

Mr. **Martinez** [continuing]. Do you have a big waiting list for entrance into your college?

Mr. **MacKenzie**. We have about three applicants for each opening.

Mr. **Martinez**. Three per opening.

Because we have to consider maybe, I think, in business terms because I was in business so long. But if I am going to operate an institution like that, I need enrollees. I need to fill up my enrollment. That enrollment has to pay a certain tuition for me to operate my organization. If I could not have those enrollees, if they didn't pay their tuition, and I couldn't operate the institution if I didn't have filled enrollment—you try to keep the cost down, so I imagine from what you said that—let's say a percentage of nonenrollment would cause great difficulty in operating the school. On that premise, excluding any tax exemptions you claim or those students that are there on Government guaranteed loans, if you eliminate all those, would you still have enough enrollment to maintain and operate your school?

Mr. **MacKenzie**. Probably so. It is speculative, of course. But we believe probably so.

I think what would trouble me is that it probably would necessitate the increasing of tuition charges.

Mr. **Martinez**. So there would be some adverse impact anyway if you lost all of that?

Mr. **MacKenzie**. I would think probably so.

Mr. **Martinez**. Thank you.

Mr. **Owens**. Mr. Chairman.

Mr. **Edwards**. I think we ought to point out, before we adjourn for lunch, that tax exemption is not an issue in this legislation. This legislation does not affect existing Federal regulations as to what is Federal financial assistance for the purpose of these laws. So I don't think that we ought to confuse an institution receiving Federal funds, either through loans or some other way, with tax exemptions.

Mr. **Martinez**. Mr. Chairman, I realize that. The point I make here is simply that we all need Federal subsistence to exist. Some Federal laws benefit us, and we take full advantage of those.

Mr. EDWARDS. I understand.

Mr. OWENS. Mr. Chairman.

Mr. EDWARDS. Mr. Owens.

Mr. OWENS. I don't have a question, but I wanted to make a statement.

The notion being advanced by Mr. MacKenzie has widespread support. There are people who say that, if people are decent, they should not have to bear the burden of a civil rights enforcement apparatus. Yet, history has clearly shown—I think Dr. Hackney addressed himself to it—that it is not just a matter of people being evil or racist. Therefore they must be watched and made to enforce the law.

There are numerous situations where people are quite decent, and the political apparatus is supportive, and all the positive factors are in place, yet, without the enforcement apparatus of the civil rights law, you don't have an elimination of the kind of discrimination that has existed for years with respect to women. The resources just are not available.

As Dr. Hackney said, there is always a battle for resources. In a place like New York, I think it was in order, Mr. Hayes, for you to suggest there be more communication between the congressional delegation and the bureaucracy of the board of education. We find it very hard to communicate with them. We are constantly faced with situations where they are showcasing.

You have one or two schools which do comply with the law; great examples of what should happen. But it never gets spread throughout the entire system. Mammoth systems like the New York City Board of Education and schools under its jurisdiction are always in that kind of situation. But small institutions also have the same problems with respect to how we allocate the resources that are available.

It would take large investment just to bring New York City's boy's sports program to function at an adequate and acceptable level, is a great battle. Yet, there is also pressure and need to end the discrimination in the sports programs so that girls also have sports programs.

Vocational education programs have the same problem. Investment to bring existing traditional programs which has mostly served males is in great need of financial support and aid.

Now we have to make sure that this program is adequate for both boys and girls. The pressures are such that, without some push from the Federal Government, without the requirement of some kind of enforcement apparatus, nothing significant will happen. You will only have showcasing; you will not have the effort by the total system to really comply and to bring the kind of justice—we are talking about justice for everybody, whether you talk about racial justice or sexual justice—necessary to the system so that every male, every female will have the same equal opportunity.

The enforcement is very necessary no matter how decent people are. It has nothing to do with the morality of people being asked to comply. There is no assumption that asking people to comply implies that they are evil or racist or sexist. It is just that history has shown that compliance does not happen, for various reasons, unless there is enforcement apparatus present.

Thank you.

Mr. **Edwards**. Thank you, Major Owens.

We are going to adjourn now for lunch. We thank the panelists very much. It has been a splendid morning, and you all have made a great contribution.

We have been invited to lunch by Bill Gray. It is very seldom a Congressman will pick up a check, so we are going to do that.

[Whereupon, at 11:50 a.m., the joint committees recessed, to reconvene at 1:00 p.m., the same day.]

AFTERNOON SESSION

Mr. **Edwards**. The 1 o'clock witnesses should appear. The subcommittee will come to order. The House Judiciary Committee and the House Education and Labor Committee are holding joint hearings in many parts of the country in our examination of H.R. 700, the Civil Rights Restoration Act of 1985. The thrust of which proposed legislation would be to reverse the Supreme Court decisions of a year ago in *Grove City* v. *Bell.*

Those of us who are sponsoring the bill—and there are 170 in the House, and 46 as I recall in the U.S. Senate—feel that all the evidence indicates that the decision has been a disaster. There are complaints being dropped all over the country by the Office of Civil Rights in the Dept. of Education, and we feel that in most of the areas of civil rights that we have been so devoted to for so many years, have been emasculated by the *Grove City* decision.

With us today, are members of both the Judiciary Committee and the House Education and Labor Committee. On my left is my colleague from Michigan, a member of the House Judiciary Committee, Judge George Crockett. Next is a member of the Education and Labor Committee, from Illinois, Congressman Charles Hayes, and on the end the very distinguished member from Brooklyn, NY, of the House Education and Labor Committee, Congressman Major Owens.

We will now proceed with the next panel. The first witness—Congressman Jim Sensenbrenner, ranking Republican from Wisconsin of the Judiciary Committee Subcommittee on Civil Rights was here this morning. He had to leave but the associate counsel for the minority, Phil Kiko, will also participate in questions.

The first witness is Ms. Battle Rankin Robinson, chair of the Higher Education Title VI Commission of the State of Delaware. We welcome you Ms. Robinson, and you may proceed.

STATEMENT OF BATTLE RANKIN ROBINSON, CHAIR, HIGHER EDUCATION TITLE VI COMMISSION FOR THE STATE OF DELAWARE; REV. SAM HART, PHILADELPHIA, PA; AND CAROL TRACEY, WOMENS LAW PROJECT, PHILADELPHIA, PA

Ms. **Robinson**. Thank you for the opportunity to be here today. My name is Battle Robinson. I am an attorney and I reside in Georgetown, DE. Most recently I was employed as legal counsel to former Gov. Pete du Pont. I am chairperson of the Higher Education Title VI Commission of the State of Delaware, which oversees the State's compliance with the provisions of the Civil Rights Act of 1964 prohibiting racial discrimination in higher education.

My remarks today reflect my personal views and in no way reflect the views of either former Governor du Pont or the Delaware Title VI Commission. Further, I am able to speak only to provisions which affect higher education and I have no comment on other portions of the proposed legislation.

I am speaking today as someone who is in effect present at the creation. Before I moved to Delaware I was an attorney with the Civil Rights Division of the U.S. Department of Justice. In fact, I was the first woman attorney hired by that Division after it was created, and I joined the Division in 1963, and one of my earliest assignments was to do research and background work on the Civil Rights Act of 1964. So this is something that I have had a great deal of interest in for a long period of time.

When President Johnson signed the Civil Rights Act of 1964 into law, he said:

> This Civil Rights Act is a challenge to all of us to go to work in our communities and in our states, in our homes and in our hearts, to eliminate the last vestiges of injustice in our beloved country.

In my service as chairperson of Delaware's Title VI Commission I have been privileged to witness just that type of work and dedication among numerous individuals at the State and community levels. I am proud of what has been accomplished in our one small State, in our three institutions. In 1984, Delaware spent approximately $8 million to fulfill the commitments of its title VI plan. And despite the serious financial crisis which the State faced 2 years ago necessitating many cuts in authorized expenditures, none of the funds earmarked for title VI were touched.

I might point out that Delaware is one of the 11 States which is subject to the *Adams* litigation in the United States District Court for the District of Columbia. Pursuant to that litigation, it has entered into negotiations with the U.S. Department of Education to develop a plan to eliminate the last vestiges of racial discrimination on our higher educational system.

We are now in the 4th year of a 5-year plan to do that. We have earmarked a number of funds which go solely for title VI enforcement in the State. Pursuant to that we spent, as I have said, in 1984 about $8 million to improve the physical plant at our formerly traditional black institution, to improve the programs at that institution, and also to fund minority scholarships at the University of Delaware. As I have said, we are very proud of what we have been able to accomplish in even this short period of time.

Of course, much still needs to be done, and what we have accomplished has not come easily. It has been expensive, it has been time consuming and it has at times been discouraging. But not one in the countless meetings and discussions that I have attended over past 4 years, not once from any educator, administrator, trustee, governor, legislator or student, has it been suggested that we should go back, that we should be free to follow old discriminatory ways.

And that is what troubles me if Congress permits the *Grove City* decision to stand, that we will in effect be going backward. I am concerned that without the strong impetus of Federal law, we will allow ourselves to drift back into old ways.

I am also concerned about what Congress' failure to act may say to the institutions and individuals who have been involved in the desegregation process for many years. In effect, the Federal Government will be announcing, "It has been good of you to spend millions to reorganize your education system, to put up with all the aggravation, but guess what? We really didn't mean it after all."

Similarly, it seems unfair to say to students, "We can see that you are not discriminated against in getting into college, but once you are there, there is nothing we can do." Or, "Last year your department couldn't discriminate in awarding scholarships, but this year it can." It is just this type of governmental vacillation that provokes cynicism and distrust among the people, particularly I think among young people.

So it is for this basic reason that our elected representatives should encourage, support and continue the kind of efforts that have been made across this country for the past 20 years to guarantee the promise of equal opportunity—that I support the Civil Rights Restoration Act of 1985.

Let me address two specific concerns. The first is the burden of recordkeeping that the regulations of the Department of Education have required of institutions and would continue to be required under the proposed legislation. Our institutions in Delaware have had to hire additional personnel, expand computer capacity and find more space simply to keep up with the reams of reports required by the Department of Education.

But this should not be an excuse to fail to act. The remedy lies elsewhere than in permitting the program specific format of the *Grove City* case to stand. Indeed, there is reason to believe that changing present practices to conform with a program specific format would aggravate rather than alleviate this situation. Rather, the Department should reassess its requirements in an effort to ease the burden.

More importantly, we are all sensitive to the argument that this proposed legislation would result in unwarranted governmental intrusion in education. But it is important to note that this act would not establish any new authority that the Federal Government does not already possess. No one has suggested that as a constitutional matter the Federal Government may not require nondiscrimination throughout an institution which receives Federal funds. And indeed for 20 years until the *Grove City* case, Federal power had been execised in just the way the act contemplates. Thus, the proposed act establishes no new thrust of Federal power or domination over education. The issue, rather, is whether existing power should be exercised by the 99th Congress.

Weighing the benefits of continuing well established policies and practices, the importance of supporting the efforts of many individuals across this country over a 20-year period, and above all, the interest of perpetuating the nondiscriminatory policies and practices which are in place at the great majority of institutions, it is my view that the Civil Rights Restoration Act should be enacted.

Than you for the opportunity to express my views.

Mr. EDWARDS. Well, thank you very much, Ms. Robinson for your very good testimony.

[Prepared statement of Battle R. Robinson follows:]

PREPARED STATEMENT OF BATTLE R. ROBINSON, CHAIRPERSON, HIGHER EDUCATION TITLE VI COMMISSION, STATE OF DELAWARE

My name is Battle Robinson. I am an attorney and I reside in Georgetown, Delaware. Most recently I was employed as legal counsel to former Governor Pete du Pont. I am Chairperson of the Higher Education Title VI Commission of the State of Delaware which oversees the State's compliance with the provisions of the Civil Rights Act of 1964 prohibiting racial discrimination in higher education.

My remarks today reflect my personal views and in no way reflect the views of either former Governor du Pont or the Delaware Title VI Commission. Further, I am able to speak only to provisions which affect higher education and I have no comment on other portions of the proposed legislation.

When President Johnson signed the Civil Rights Act of 1964 into law, he said:

"This Civil Rights Act is a challenge to all of us to go to work in our communities and in our states, in our homes and in our hearts, to eliminate the last vestiges of injustice in our beloved country."

In my service as Chairperson of Delaware's Title VI Commission I have been privileged to witness just that type of work and dedication among numerous individuals at the state and community levels. I am proud of what has been accomplished in our one small state, in our three institutions. In 1984 Delaware spent approximately 8 million dollars to fulfill the commitments of its Title VI Plan. And, despite the serious financial crisis which the State faced two years ago necessitating many cuts in authorized expenditures, none of the funds earmarked for Title VI were touched.

Of course, much still needs to be done, and what we have accomplished has not come easily. It has been expensive, it has been time-consuming and it has at times been discouraging. But not once in the countless meetings and discussions that I have attended over the past 4 years, not once from any educator, administrator, trustee, governor, legislator or student has it been suggested that we should go back, that we should be free to follow old discriminatory ways.

And that is what troubles me if Congress permits the *Grove City* decision to stand, that we will in effect be going backward. I am concerned that without the strong impetus of Federal law, we will allow ourselves to drift back into old ways.

I am also concerned about what Congress' failure to act may say to the institutions and individuals who have been involved in the desegregation process for many years. In effect, the Federal government will be announcing, "It's been good of you to spend millions, to reorganize your education system, to put up with all the aggravation—but we really didn't mean it after all." Similarly, it seems unfair to say to students, "We can see that you're not discriminated against in getting into college, but once you're there, there's nothing we can do." Or, "Last year your department couldn't discriminate in awarding scholarships, but this year it can." It is just this type of governmental vacillation that provokes cynicism and distrust among the people, particularly among young people.

So it is for this basic reason—that our elected representatives should encourage, support and continue the kind of efforts that have been made across this country for the past 20 years to guarantee the promise of equal opportunity—that I support a Civil Rights Restoration Act of 1985.

Finally, let me address two specific concerns.

The first is the burden of record keeping that the regulations of the Department of Education have required of institutions and would continue to be required under the proposed legislation. Our institutions in Delaware have had to hire additional personnel, expand computer capacity and find more space simply to produce the reams of reports required by the Department.

But this should not be an excuse to fail to act. The remedy lies elsewhere than in permitting the program-specific format of the Grove City case to stand. Indeed, there is reason to believe that changing present practices to conform with a program-specific format would aggravate rather than alleviate this situation. Rather, the Department should reassess its requirements in an effort to ease the burden.

More importantly, we are all sensitive to the argument that this proposed legislation would result in unwarranted governmental intrusion in education. But is important to note that this Act would not establish any new authority that the federal government does not already possess. No one has suggested that as a constitutional matter the federal government may not require non-discrimination throughout an institution which receives federal funds. And indeed for 20 years until the *Grove*

City case federal power had been exercised in just the way this Act contemplates. Thus, the proposed Act establishes no new thrust of federal power or domination over education. The issue, rather, is whether existing power should be exercised by the 99th Congress.

Weighing the benefits of continuing well established policies and practices, the importance of supporting the efforts of many individuals across this country over a 20 year period, and above all, the interest of perpetuating the non-discriminatory policies and practices which are in place at the great majority of institutions, it is my view that a Civil Rights Restoration Act should be enacted.

Thank you for the opportunity to express my views.

Mr. **Edwards**. Our next witness we welcome, Rev. B. Sam Hart of Philadelphia.

Reverend Hart, you may commence your statement.

Reverend **Hart**. And I, too, am grateful for the privilege of addressing this committee today. It is clear to me that the purpose of our representatives in desiring to update the civil rights bill was good, was noble, but I detect a major problem, I imagine of most legislatures. That is, to put no precise, clear, and accurate language that is really an exact intention.

Not being a lawyer, I shall not even attempt to repeat any legal analyses that have been made, but I hope that the opinion of the General Counsel to the Civil Rights Commission will be taken under advisement on that point.

I wish to address the issue before this committee as a minister of the gospel, noting specifically some dangers I see in the present structure of the bill touching religious freedoms. I also speek as an educator and a black person concerned about the impact of this bill on the poor and middle-class citizens of our country who will be aspiring toward a better education. I would like to deal with the latter first.

I suspect that there is a very serious underestimation of the depth of religious commitment of many of our citizens. A major part of this commitment is to maintain the integrity of complete freedom from even the appearance of political, governmental, or State interference. History has demonstrated that many wars have been fought over this issue, and our Founding Forefathers were motivated by this same drive for total religious freedom, which led to the institution of our first amendment principle of separation of State and church. It should be positively noted that this drive for religious freedom has not been diminished, not even a little, in persons of strong faith today.

Any attempt to extend the long arms of government into the areas they consider sacred will only increase the kind of unfortunate confrontations we have seen in recent months, as in Nebraska, where there are no winners—only losers. Many churches consider it their God given right, if not their God ordered duty to have their young people educated according to the tenets of their faith, removed from worldly, political or other outside influences. This bill would seem to bring through the back door some regulations and controls to bear on such institutions, which I would like to assure this committee, many will reject.

The back door access in this case is the reckoning of any aid to students as being tantamount to helping the institution. While it will have the desired effect on some schools, there are several others, especially religiously motivated schools, that will take a different course. Namely, they will simply not accept students who receive any type of Federal aid. But where will this leave the poor, or middle-class student who needs this aid, and who would have desired to attend such a school for reasons of faith? In his own pursuit of happiness that student would have come across a stumbling block, and I think it would blind us to feel that these schools would simply say, OK, we will conform. A student who would not be able to go to the school of their choice because they could not reverse it would be in my opinion a reversal or denial of their own civil right.

The fact we must face is: Broadening the scope of the civil rights bill to include the entire institution when aid is received only by one activity or program or student, will only serve to cause the institution to eliminate that source of aid, program, activity, or student, to eliminate the control, but certainly not to bow to governmental control. That is already evident in our history.

When a person has strong convictions, and is convinced that they are right or godly, then the fact is that laws, rules or regulations will not alter those convictions. It will only strengthen his determination to live by them, fight for them, and have victory over them, or else die fighting for the cause. I suggest that if that cause is wrong, then a process of education might help, but certainly not laws in that case. This principle is well established over and over in history, as when our forebears, convinced taxation without representation was wrong, took the stance immortalized in Patrick Henry's enunciation: "Give me liberty, or give me death."

In my humble opinion, the better part of wisdom would be to avoid legislation that brings the Government into an ideological confrontation with some of our finest and most productive citizens, who basically desire to be law abiding. Legislation that would ultimately prevent our less affluent students from attending a good school of their choice, will have far reaching and deleterious consequences, to say nothing of its lack of compassion for those that suffer from it. Now, I know this is not the intent here, but be assured this would be the consequence—that what would be intended to foster civil rights, would in reality be fostering civil wrongs. I would urge this committee to recommend such changes in the bill as would protect the student who needs the aid provided for them against such harsh discrimination, by removing such indirect aid from an interpretation that the entire school, or the entire institution, is receiving Federal financial assistance.

History has shown that when laws are made open to interpretation, some interpretations are not far fetched, but even become the very opposite of what was intended by the law. A case in point would be some of the ways our first amendment to the Constitution has been interpreted to produce the very opposite of what was originally intended.

The Bible was an integral part of the society and educational systems of the days of our Founding Fathers, it gave purpose to the establishment of our public school system. It is in the Constitution of the first public school system in the country in Cambridge, MA, that its purpose for being was to teach young men to read the word of God. Less than three centuries later, it is now against the law to read the word of God in our public schools, a complete reversal of the original intent by means of interpretation.

With this in mind, I project my imagination into the future and look at a possible, and even probably outgrowth of the primary principle of this bill that I object to: If a student receives aid, the institution is regarded as receiving aid. If that be so, then someone will soon rise and say that the churches—for they are not exempted in the wording of this bill, and I think it would be wise to make that exemption—or any church having members who are supported in part or in while by some Government agency, and who contribute to the upkeep of their church, such a church, or churches may be said to be supported by financial assistance from the Government, thus becoming legally bound and submissive to its control. Far fetched, but we have seen that sort of thing happen. You can well visualize the trouble that would create. I urge that the bill be carefully protected against such broad interpretations; that churches and religious institutions be exempted from it to preserve the integrity of the first amendment.

Mr. Disler's analysis covers several points where the wording of the bill clashes with the clarity of intentions, or at least is vague and open to broad interpretation. I will not get into that now, especially since I am not a lawyer and ill-equipped to create legal terminology. But I will recommend to your serious consideration the need for changes in the wording, so that it will say what I think it means to say. I recognize this to be very difficult, but also a very necessary task.

There is, however, one term used in the bill that stands out blatantly to me, the expression, in referring to an agency, entity, program, et cetera: "to which assistance is extended." What does that mean? What if aid is offered to an institution, even if the institution refuses it or never receives it, they are nonetheless liable for the controls that inevitably follow the aid, because it was offered?

It needs to be clarified that an agency, entity, or institution should receive the aid to be brought under the scope of this bill. It should also be clarified that such aid should be at the voluntary request of such entity or institution who requested it, with the full knowledge that they are thereby embracing certain controls of the Federal Government.

In summation, I recommend the wording of the bill be carefully revised to carry out its real purpose, without risking direct confrontation with varied and/or religious bodies, and thereby making positive that it cannot act against the civil rights of the faithful among our citizenry. I strongly urge that such paragraphs as would make aid to one or more students in a school be construed as aid to the entire school, be amended. Controls from such indirect aid will only serve to hurt the students—not even will the school necessarily—the very ones the bill is trying to protect.

We applaud the civil rights bill as it stands, and do not question that it can be tightened in some areas. We must, however, guard against going to extremes in our enthusiasm for what we believe is right.

May God give you all wisdom, is my prayer.

Mr. **Edwards**. Thank you very much, Reverend Hart, for a very helpful testimony.

[Prepared statement of Dr. B. Sam Hart follows:]

PREPARED STATEMENT OF DR. B. SAM HART, PRESIDENT, GRAND OLD GOSPEL FELLOWSHIP, INC.

I am grateful for the privilege of addressing this judiciary committee. It is clear that the purpose of our representatives in desiring to update the Civil Rights Bill is good, but I detect a major problem of legislators—to put into precise, clear and accurate language their exact intention. Not being a lawyer, I shall not even attempt to repeat any legal analyses that has been made, but I hope the opinion of the General Counsel to the Civil Rights Commission will be taken under advisement.

I wish to address the issue before this committee as a minister of the Gospel, noting some dangers I see touching religious freedoms; also as an educator and a Black person concerned about the impact of this bill on the poor and middle-class citizens of our country who will be aspiring to a better education. I would like to deal with the latter first.

I suspect that there is a serious underestimation of the depth of the religious commitment of many of our citizens; a major part of this commitment is to maintain the integrity of complete freedom from even the appearance of political, governmental, or State interference. History has demonstrated that many wars have been fought over this issue, and our founding fore-fathers were motivated by this same drive for religious freedom, which led to the institution of out First Amendment principle of separation of State and church. Ladies and gentlemen, this drive for religious freedom has not been diminished, not even a little, in persons of faith today.

Any attempt to extend the long arms of government into the areas they consider sacred will only increase the kind of unfortunate confrontations we have seen in recent months, as in Nebraska, where there are no winners—only losers. Many churches consider it their God-given right, if not their God-ordered duty, to have their young people educated according to the tenets of their faith, removed from worldly, political or other outside influences. This bill would seem to bring thru the back door some regulations and controls to bear on such institutions, which I can assure you, many will reject. The back door of access in this case, is the reckoning of any aid to students as being tantamount to helping the institution. While it will have the desired effect on some schools, there are several others, especially religiously motivated schools, that will take a different course. Namely, they will simply not accept students who receive any type of Federal aid. But where will this leave the poor, or middle class student who needs this aid, and who would have desired to attend such a school for reasons of faith? It shuts them out. They would not be able to go to the school of their choice, beause they could not afford it.

The fact we must face is: Broadening the scope of the Civil Rights Bill to include the entire institution when aid is received only by one activity or program or student, will only serve to cause the institution to eliminate that source of aid, program, activity or student, but certainly not to bow to governmental control. This is already evident.

When a person has strong convictions, and is convinced that they are right or godly, then laws, rules and regulations will not alter his convictions; it will only strengthen his determination to live by them, fight for them, and have victory over them, or else die fighting for the cause. This principle is well established over and over in history, as when our forebears, convinced that taxation without representation was wrong, took the stance immortalized in Patrick Henry's enunciation: "Give me liberty, or given me death."

In my humble opinion, the better part of wisdom would be to avoid legislation that brings the government into an ideological confrontation with some of our finest and most productive citizens, who desire to be law-abiding. Legislation that would utimately prevent our lesser affluent students from attending a good school of their choice, will have far-reaching and deleterious consequences, to say nothing of its lack of compassion for the poor. Now I know this is not the intent here, but be assured this would be the consequence—that what woud be intended to foster civil rights, would in reality be fostering civil wrongs. I would urge this committee to recommend such changes in the bill as would protect the student who needs the aid provided for them against such rash discrimination, by removing such indirect aid from an interpretation that the school is receiving Federal financial assistance.

History has shown that when laws are made open to interpretation, some interpretations are not only far-fetched, but even the very opposite of what was intended by the laws. A case in point would be some of the ways our First Amendment to the constitution has been interpreted to produce the very opposite of what was intended. The Bible was an integral part of the society and educational systems of the days of our founding fathers; it gave purpose to the establishment of our public school system. It is in the constitution if the first public school system in the country, in Cambridge, Mass., that its purpose for being was to teach young men to read the Word of God. Less than three centuries later, it is now against the law to read the Word of God in our public schools; a complete reversal of interpretation.

With this in mind, I project my imagination into the future and look at a possible, and even probable outgrowth of the primary principle of this bill that I object to: if a student receives aid, the institution is regarded as receiving aid. If that be so, then someone will soon say that the churches, (for they are not exempted in the wording of this bill, and I think it would be wise to make that exemption), or any church having members who are supported in part or in whole by some government agency, and who contribute to the upkeep of their church, such a church or churches may be said to be supported by financial assistance from the government, thus becoming legally bound and submissive to its control. You can well visualize the trouble that would create. I urge that the bill be carefully protected against such broad interpretations; that churches and religious institutions be exempted from it to preserve the integrity of the First Amendment.

Mr. Disler's analysis covers several points where the wording of the bill clashes with the clarity of the intentions, or at least is vague and open to broad interpretation. I will not get into that now, especially since I am not a lawyer and ill-equipped to create legal terminology. But I will recommend to your serious consideration the need for changes in the wording, so that it will say what I think it means to say. I recognize this to be a very difficult, but very necessary task. There is however, one term used in the bill that stands out blatantly to me: the expression—referring to an agency, entity, program, etc. "to which assistance is extended." Does this mean that if aid is offered to an institution, even if the institution refuses it or does not receive it, they are none the less liable for the controls that inevitably follow the aid, because it was offered? It needs to be clarified that an agency, entity or institution should receive the aid to be brought under the scope of this bill; it should also be clarified that such aid should be at the voluntary request of such entity or institution who requested it, with the full knowledge that they are thereby embracing certain controls of the Federal government.

In summation, I recommend the wording of the bill be carefully revised to carry out its real purpose, without risking direct confrontation with varied and/or religious bodies, and thereby making positive that it can not act against the Civil Rights of the faithful among our citizenry. I further strongly urge that such paragraphs as would make aid to one or more students in a school be construed as aid to the schools, be amended. Controls from such aid will only serve to hurt the students—the very ones the bill is trying to protect. We applaud the Civil Rights bill as it stands, and do not question that it can be be tightened in some areas. We must, however, guard against going to extremes in our enthusiasm for what we believe is right. May God give you all wisdom, is my prayer.

Mr. **Edwards**. Our next member of the panel to testify is Carol Tracy who represents the women's law project here in Philadelphia.

Ms. **Tracy**. In 1970, when I was an undergraduate student at the University of Pennsylvania, women students had little hope of attending a law school, a medical, veterinary, dental, engineering or business school. These professional schools admitted only a handful of women each year.

The leadership positions in student activities and student government were held by men, and the prestigious honor societies either had no women, or required higher qualifications for them. For example, women had to have higher averages to be admitted to Phi Beta Kappa then did men. There were separate societies and organizations for women, but as in everything where separate but equal exists, separate is far less than equal.

In all of the Penn athletic complex, only one locker room, which has been designed to accommodate a visiting team of 20 members, was available to all of the women at the university.

Women got much less in exchange for their tuition dollars than men did.

Then in 1972, something akin to a miracle happened for women in education—the passage of title IX to the education amendments.

No where has the progress of women been measured more positively than it has in higher education. In a little over a decade, professional schools that had admitted only a token one or two women now have classes that are 30 to 50 percent female. Nowhere were sexual stereotypes more pronounced for example, than in veterinary medicine, where women were believed to be unable to handle large animals. Now, at the University of Pennsylvania, the majority of the students in veterinary school are female.

In undergraduate levels, women take the classes of their choice, and can be confident that their admission to graduate and professional schools is based on merit and not gender, that their financial aid is based on need, not gender.

At Pennsylvania, women, in recent years, have been editors of the school newspaper, have headed student government, and have participated effectively in all the major student organizations and activities. Whereas in 1970 women were not eligible to receive any commencement awards, they now receive half, and they are admitted on equal standing to the honor societies.

Women's athletics have flourished. Of the Ivy championships that Penn has won recently, women's awards have counted for more than half. Women athletes are eligible to win the historic alumni trophies.

Team work and competition learned through participating in athletic activities, that have long been heralded as crucial learning tools for success in the real world, are now part of women student's experiences.

The progress of women at the University of Pennsylvania, which I had the honor of observing while directing its women's center from 1977 to 1984, is mirrored in institutions of higher education throughout the country. These institutions are graduating well rounded, self-confident and capable young women, who are prepared to make the promises of equal employment opportunity, guaranteed by title VII of the Civil Rights Act, a reality.

And for the most part, these dramatic changes have been accomplished without resort to lawsuit or the intervention of Federal investigators. Compliance with title IX has been voluntary.

Had title IX been interpreted in 1972 by governmental agencies and institutions the way the Supreme Court interpreted it in *Grove City,* none of this would have happened. Now, under the *Grove City* analysis, I believe that admissions offices in professional schools could be free to deny admission exclusively on the basis of sex. Honor societies could revert to admitting men only. Women students could be effectively cut off from athletic competition, because these areas are rarely the direct recipients of Federal dollars.

The inequality in application could lead, for exmaple, to a situation where a professor of English who does not receive Federal funds could ask for sexual favors in exchange for a higher grade without the threat of a lawsuit under title IX. On the other hand, a professor of biology who does receive Federal funds could be held legally accountable for sexual harassment under title IX.

Those who might argue that so much progress has been made that Federal regulation is no longer necessary and institutional policies should suffice, must remember that it was only through Federal law, accompanied by the threat of loss of Federal funds, that change occurred in the first place. Habits of discrimination are hard to change in a lifetime. There are still many members of faculties who received their tenure 25 to 35 years ago and who actively participated in denying opportunity to women. There are powerful alumni and special interest groups—particularly those associated with intercollegiate athletics—who do not now and never have believed that women should be full and equal participants in all aspects of educational institutions. And in times of scarce resources, these groups will lobby to diminish resources for women.

Without the force of Federal law, even progressive administrations may be powerless to challenge such forces. Institutional policies alone, in areas as controversial and sensitive as civil rights are not strong enough.

And most importantly, the selective enforcement of tile IX called for by the Supreme Court in *Grove City*, will lead to such a lack of uniformity in implementation as to render any enforcement so arbitrary as to be meaningless.

Colleges and universities acknowledge that Federal student financial aid is an important component part of their overall budget. It would be self-deceiving for the Congress to believe that the impact of student financial aid dollars stops at the financial aid door.

Without the passage of the Civil Rights Restoration Act, the *Grove City* decision makes it all too possible that institutions could revert to blatant forms of discrimination without jeopardizing 1 Federal dollar of the billions that pour into educational institutions. Surely, this cannot and must not be the intent of Congress.

Similarly, the expansion of the *Grove City* analysis to title VI of the 1964 Civil Rights Act, S. 504 of the 1973 Rehabilitation Act and the 1975 Age Discrimination Act will permit widespread discrimination against racial minorities, the handicapped and the aged without the threat of loss of Federal funding.

Thank you, Mr. Chairman and thank you for allowing me to testify today.

Mr. EDWARDS. Thank you very much, Ms. Tracy.

[Prepared statement of Carol E. Tracy follows:]

PREPARED STATEMENT OF CAROL E. TRACY ON BEHALF OF THE WOMEN'S LAW PROJECT

In 1970, when I was an undergraduate student at the University of Pennsylvania, women students had little hope of attending a law school, a medical, veterinary, dental, engineering or business school. These professional schools admitted only a handful of women each year.

The leadership positions in student activities and student government were held by men, and the prestigious honor societies either had no women, or required higher qualifications for them, e.g., women had to have higher averages to be admitted to Phi Beta Kappa than did men. There were separate societies and organizations for women, but as in everything where separate but equal exists, separate is far less than equal.

In all of the Penn athletic complex—only one locker room, which had been designed to accommodate a visiting team of twenty members—was available to all the women at Penn.

Women got much less in exchange for their tuition dollars than men did.

Then in 1972, something akin to a miracle happened for women in education—the passage of Title IX to the Education Amendments.

No where has the progress of women been measured more positively than in higher education. In a little over a decade, professional schools that had admitted only a token one or two women now have classes that are thirty to fifty percent female. Nowhere were sexual stereotypes more pronounced, for example, than in veterinary medicine, where women were believed to be unable to handle large animals. Now, at the University of Pennsylvania, the majority of the students in the veterinary school are female.

In undergraduate levels, women take the classes of their choice, and can be confident that their admission to graduate and professional schools is based on merit and not gender, that their financial aid is based on need, and not gender.

Women in recent years have been editors of the school newspaper, have headed student government, and have participated effectively in all the major student organizations and activities. Whereas in 1970 women were not eligible to receive any commencement awards, they now receive half of them, and they are admitted on equal standing to the honor societies.

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Team work and competition learned through participating in athletic activities, that have long been heralded as crucial learning tools for success in the real world, are now part of women's students experiences.

The progress of women at the University of Pennsylvania, which I had the honor of observing while directing its women's center from 1977 to 1984 is mirrored in institutions of higher education throughout the country. These institutions are graduating well-rounded, self-confident and capable young women, who are prepared to make the promises of equal employment opportunity, guaranteed by Title VII of the Civil Rights Act, a reality.

And, for the most part, these dramatic changes have been accomplished without resort to law suit or the intervention of federal investigators. Compliance with Title IX has been voluntary.

Had Title IX been interpreted in 1972 by governmental agencies and institutions the way the Supreme Court interpreted it in *Grove City*, none of this would have happened. Now, under the *Grove City* analysis, I believe that admissions offices in professional schools could be free to deny admission exclusively on the basis of sex. Honor societies could revert to admitting men only. Women students could be effectively cut off from athletic competition, because these areas are rarely the direct recipients of federal dollars.

The inequality in application could lead, for example, to a situation where a professor of English who does not receive federal funds could ask for sexual favors in exchange for a higher grade without the threat of a law suit under Title IX. On the other hand, a professor of biology who does receive federal funds could be held legally accountable for sexual harassment under Title IX.

Those who might argue that so much progress has been made that federal regulation is no longer necessary and institutional policies should suffice, must remember that it was only through federal law, accompanied by the threat of loss of federal funds, that change occurred in the first place. Habits of discrimination are hard to change in a lifetime. There are still many members of faculties who received their tenure twenty-five to thirty-five years ago and who actively participated in denying opportunity to women. There are also powerful alumni and special interest groups (particularly those associated with intercollegiate athletics) who do not now and never have believed that women should be full and equal participants in all aspects of educational institutions. And in times of scarce resources, these groups will lobby to diminish resources for women.

Without the force of federal law, even progressive administrations may be powerless to challenge such forces. Institutional policies alone, in areas as controversial and sensitive as civil rights are not strong enough.

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Similarly, the expansion of the *Grove City* Analysis to title VI of the 1964 Civil Rights Act, § 504 of the 1973 Rehabilitation Act and the 1975 Age Discrimination Act will permit widespread discrimination against racial minorities, the handicapped and the aged without the threat of loss of federal funding.

Mr. **Edwards**. The gentleman from Illinois, a member of the Education and Labor Committee, Mr. Hayes.

Mr. **Hayes**. I just want to ask one question of Dr. Hart, for my own clarity and the clarity of the committee, I would like to know whether you are for or against the passage of H.R. 700. You have suggested certain revisions which could weaken it.

Reverend **Hart**. Well, H.R. 700 covers a lot of territory. I feel that much of the territory is good. I feel, however, that the dangers just need to be eliminated, and from where I sit as a minister, I think the greatest danger is its overtaking religious freedoms, and I think I explained that in my testimony.

I certainly would not want us to reverse the Civil Rights Act of 1964 but I think that in our desire to strengthen that bill in areas where it may need tightening, we can go overboard and make it more injurious than we wanted to. And the area specifically that I see is the individual student. You see, I know how strong the commitment to religious freedom is on the part of religious people. I mean, they will go to jail, they will die, they will do whatever to uphold what they are convinced is absolutely right. And I don't think that the Federal Government ought to deliberately move against this sort of faith and come up against confrontations where it is not absolutely necessary, and I don't think it is necessary in this case. And it would happen if we make it so that the Government can have direct control over the religious institutions. I speak specifically about them, though I imagine other private institutions may feel the same way.

I think that the separation of church and state is something we ought to really keep sacred here, and just because a student received aid and chooses to go to XYZ college, which happens to be a private institution—this religious private institution has refused every form of aid in order to be away from the controls Federal Government, some of these controls by the way would be considered anti-scriptural or against them—just because of that one student or more students who receive aid, the institution is interpreted as receiving aid, both bring it under those controls, I think would be going too far, and I will yield to my colleague.

Mr. **Crockett**. I wanted to raise a question, and that is, whether or not Reverend Hart can point to any provisions in House bill 700 that attempt to regulate religion?

Reverend **Hart**. That is it. I said it comes through a back door. There is no provision there which says, hey, look, we intend to regulate religion. Further, I don't believe—and I said this in my testimony, I don't believe that the intent of the drafters of this was to regulate religion, et cetera.

Mr. **Crockett**. Will you hold up 1 minute? I don't think you were here this morning when we had the testimony from Dr. McKenzie, who is president of Grove City College.

Reverend **Hart**. Whom I know, yes.

Mr. **Crockett**. He didn't state what you are stating now, he didn't accuse this legislation of attempting to regulate religion——

Reverend **Hart**. Well, I am not accusing——

Mr. **Crockett**. He faced the evident fact that what we are exercising here is the legitimate power of Government to decide under what conditions it will make grants.

I serve on the Foreign Affairs Committee in the House of Representatives. Every year we give hundreds of millions of dollars away, but we attach certain conditions to it that we think will bring about the results that the overwhelming majority of the American people want. And so we say we are going to give $50 million to a country like Haiti. Now, you and I know something about the dictatorship character of the Government of Haiti. So we attach conditions that the President shall certify to us that Haiti is making progress toward iradicating those oppressive laws, and guaranteeing of human rights.

Now, to that extent, you would argue, if I follow you logically, that the Government of the United States is trying to interfere in the internal affairs of the Government of Haiti. It is not.

Reverend **Hart**. No.

Mr. **Edwards**. It is merely saying here is $10 or $15 million. If you want it, you take it under these conditions. But you don't have to take it. Now, this morning, Dr. McKenzie indicated that as far as Grove College was concerned, they had decided they didn't want it. And so they will not take any students who are the recipients of grants.

You might take the same position. There is nothing whatever in this act that seeks to compel any student to give up his or her religious convictions.

Reverend **Hart**. May I? I think you misunderstood the thrust of testimony. I am not interpreting it the way you are. May I suggest, sir, Grove City's stand will be followed in many similar intitutions across the country. We do not want Federal aid because it comes with the conditions, and we don't necessarily want to go along with all the conditions. Therefore, who is hurt by Grove City's taking that stance?

My son went to Grove City College. My son could not go to Grove City College years ago without Federal financial assistance, and he received it. But now, after this bill——

Mr. **Crockett**. Then your point is not a valid point. He didn't have to go to Grove City.

Reverend **Hart**. But suppose that is the college he chose for certain ethical, moral, religious reasons, he chose to go to Grove City College. It stood for some of the things that he wanted to stand for. Then this bill would say, fellow, sorry. You need financial aid, you can't go to Grove City. Go look at some other place, for another college.

Mr. **Crockett**. Now then, you deduce from that that this bill would have kept your son from going to Grove City College?

Reverend **Hart**. From going to the school of his choice.

Mr. **Crockett**. Let me give you an analogous situation. I graduated from Moorehouse College, Dr. Martin Luther King's school. After that, I wanted to go to Harvard University to study law. The tuition was $500, and so I went to the University of Michigan where the tuition was much less. Now, would you say that Harvard, by making the tuition $500, intentionally prevented me from getting an education, a legal education?

Reverend HART. Well, let's face the fact that those institutions, the Ivy League institutions that have very high tuition, do eliminate a large number of poor students from their rolls by their high tuition. But you see, that is the local institution doing it. Here now, it is the Federal Government providing now a condition under law that will again prevent another choice of another set of students from going to the college of their choice because the college does not want to be under the control, or whatever, the scope of having received Federal aid.

I think that it is the student that is going to get hurt, not the college. Grove City College or any other college like that, they will match your law. They will say, all right, we are not going to receive any students, and that will settle it for us. And they are not going to be hurt. Well-to-do students will continue to go there, but the poor students who would like to aspire to something like that will not be able to go.

That was the gist of my testimony, that without meaning to, without the intention of hindering students in their freedom of choice, in their pursuit of happiness, you will have put some stumbling blocks in the way that would certainly have made it difficult.

Mr. CROCKETT. I thank the gentleman for the time.

Mr. HAYES. I don't want to use, sir, any more time. I am just a little bit confused. The testimony of the Reverend Hart, because we have had testimony here this morning——

Reverend HART. I am sorry, I wasn't able to be here this morning.

Mr. HAYES [continuing]. That suggests a change in attitude is already developing because of lack of commitment in the enforcement of civil rights laws. The *Grove City* decision is furthering this view. Your testimony certainly did not indicate—you mention the example of your son having gone to Grove City.

The disadvantaged may want to go to Grove City in order to further their education, but cannot go without aid and assistance from the Federal Government, which they would be entitled to. And if they accept it and Grove City says you can't come—and we had testimony from the gentleman from Grove City himself indicating I think less than 15 black students out of an enrollment of 2,200 students at that school. So there is something wrong with that kind of position, I think.

Reverend HART. Yes, but that wouldn't make it right, sir. The change here wouldn't make it right. What I am saying is—let me try to find out how to make it right without making it even further wrong. So next year there will be 10 or give black students out of the enrollment.

Mr. HAYES. Mr. Chairman, thank you for my time.

Mr. EDWARDS. Thank you, Mr. Hayes.

The gentleman from Michigan, Judge Crockett.

Mr. CROCKETT. Mr. Chairman, I really don't have anything new I want to add except to point out that Ms. Robinson has answered everything that Reverend Hart had to say in the concluding paragraph of her testimony on page 3, where she states, and I quote:

No one has suggested that as a constitutional matter the Federal Government may not require nondiscrimination throughout an institution which received federal funds. And indeed, for 20 years, until the *Grove City* decision federal power has been exercised in just the way this Act contemplates. Thus, the proposal establishes no new thrust of federal power or domination over education. The issue rather, is whether existing power should be exercised by the 99th Congress.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Judge Crockett.

The gentleman from New York, Mr. Owens.

Mr. OWENS. Ms. Robinson, President MacKenzie from Grove City College repeatedly argued that the intrusion of the Federal Government is more costly. That was one of the reasons that they wanted—it becomes a liability. You document the argument in one sentence when you say the paperwork has caused the hiring of one additional person.

Since you support basically the stricter and more regular enforcement of the civil rights law, what positive suggestions would you have about the paperwork? Can you get on the record some suggestions about how to minimize it? Have you made suggestions to minimize it and have they not been accepted by the Department of Education?

Ms. ROBINSON. Well, the people in our institutions who are in charge of keeping records have been in constant contact with people in Washington from the department. They have an ongoing dialogue about the requirements. It does seem to me that the department should take a careful look at that. One of the most aggravating things is that format is constantly changing. So they will go through a year and get all their records the way they think that they should have them and then the department comes in and changes the format and they have to start all over again.

It seems to me it is something of an administrative matter the department should pay full attention to because it is a burden on the institutions. I do believe it has eased somewhat as we have gotten further into it and there is better information for what is needed and how to go about getting it. It was a real problem the first couple of years of the plan, but I see it as more an administrative problem than something the Congress could——

Mr. OWENS. That argument has been offered as one example of an impediment to providing good education. I think it would be useful for associations—commissions like yours and associations and higher education groups—to submit to the committee, certainly Education and Labor Committee, Post-Secondary Education Committee, suggestions that they have made in the past which have not been followed, or any suggestions they would like to make now in terms of how to eliminate this great barrier to implementing the law at the lowest possible cost.

Ms. Tracy also, I want to congratulate you on excellent testimony and ask if you know, or is there any group that knows, because they follow it on a regular basis, of what you might call backsliding since the *Grove City* decision? Can we document—there is a general feeling here that there is going to be backsliding—a few examples? Is anyone monitoring this? What is happening as a result of *Grove City*?

Ms. **Tracy**. Yes, I think the project on the status of education and women in Washington is monitoring it. The area of collegiate athletics is the one where the greater measure is. I believe there is a case in Michigan where, until recently, the process from the men's athletics which produced a lot of revenue, would be used to support the women's teams as well. And recently, because they wanted to build new athletic facilities, the women's athletics program was told to go to the legislature to get additional funds. People are viewing that with great alarm.

Mr. **Hayes**. So, the project on the status of women in education monitors that very closely?

Ms. **Tracy**. yes.

Mr. **Owens**. Thank you very much.

I think, Dr. Hart, it should also be noted that in testimony this morning President McKenzie emphasized this danger of some possiibility of the curriculum being affected but he could cite no examples where this had ever happened. Some of the people testifying with him who have a long history in higher education also noted that there were no examples that they could remember, except one case where some draft regulations had circulated which briefly discussed the curriculum and then it was dropped immediately so that there is no precedent to support your fear that there is going to be some back door intrusion on religious liberty through this kind of legislation. You have not cited any concrete examples.

Reverend **Hart**. No, I have no concrete examples because it hasn't happened yet. I only think though, that the possibility that the door is sort of cracked. That it could be pushed open later on that same principle of the bill. There is only one principle really that I object to in this bill, and that is that one student receiving aid, and the institution is conceived or construed as receiving aid. That is the only principle of this bill that I really object to strongly.

Mr. **Owens**. Do you have any doubt about the ability of the first amendment to protect religious institutions of all kinds? First amendment is not being repealed by this bill. It will still be there.

Reverend **Hart**. I am afraid to answer that one way or the other because I don't know how it will be interpreted. That is the problem. We have seen some weird interpetations by many courts of some of these laws that—I mean far removed from the intent of the lawmakers. While I am satisfied that the gentlemen who have put forth this bill did not have that in mind, take that principle that I just mentioned of one student receiving aid, and therefore the institution is construed as receiving aid. What about a person on welfare who is a member of a church? The person received aid from the Federal Government. The church gets a contribution from her welfare. Does the church then receive—you see the principle——

Mr. **Owens**. You gave a simple example in your testimony. You said it was far fetched. I agree with you it is farfetched.

Reverend **Hart**. It is farfetched. Isn't it far fetched when you consider the early days of our Founding Fathers who established this institution, this Government under God and put prayer and Bible reading into our public schools, to think that a few years later prayer reading in the public schools would become against the law?

Mr. OWENS. You won't find in the Constitution any establishment of prayer and Bible reading in the public schools. Your conflict is between the Constitution and some local constitutions that you have cited, local ordinances that you have cited. It was not the Constitution of the United States that put prayer and Bible reading in the public schools.

I have no further questions, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Owens.

I want to make it very clear, in the legislative history of this bill we will make it clear that we are not changing the law from the past 20 years. We are changing the law in this bill insofar as the *Grove City* decision is concerned. We are not writing new law. We are not creating anything that should cause false fears. The legislative history that can be referred to by all of the judges of the land, will be very clear that no new law is written insofar as this bill is concerned. That is our intention, carefully designed.

Reverend HART. May I respond to that?

Mr. EDWARDS. Yes.

Reverend HART. I agree with you, you are not changing the law, but you are changing the scope of it. You are changing the area of it, and I think we are overlooking a danger to the civil rights of certain individuals.

Mr. EDWARDS. We are not changing the scope of the law. The law has been interpreted the same for 20 years up until a year ago. We are not changing the scope of it. We are not affecting what constitutes Federal financial assistance under these 4 statutes. This bill has nothing to do with welfare. Welfare is not the kind of Federal aid that would qualify an institution to come within the purview of these laws.

Ms. Tracy, I appreciated your mentioning that there are more women in the veterinary profession now. I hadn't thought of that but any of us who have watched women and girls with animals would appreciate that. I know that girls and women are so much better with horses, for example, than men.

Ms. TRACY. But it had always been held against them in their education to be veternarians.

Mr. EDWARDS. How unfair it must have been.

Ms. TRACY. Yes.

Mr. EDWARDS. I know that my cat, for example, treats my wife with much more respect than he treats me. [Laughter.]

I think we have to rehear, the principle is very clear. It is like the principle in the Bill of Rights, that the Government is supposed to keep its hands out of the press. The press must be free, religions must be free, free of Government control. Freedom of speech, all those principles are very clear.

We have a principle here. This bill is very clear. That is, if you get help, Government money, you don't discriminate, period. That is very clear.

If you want to discriminate, don't accept Government assistance. That includes by court decision and congressional history, student aid. So it seems to me that from some of our friends in the Senate who filibustered this bill to death last year, there is a big smoke screen going up.

And because the principle really is very, very clear. I think we always have to remember that we have many people of good intentions who are against the bill.

They will bring up any kind of reason to defeat the bill. President Reagan, for example, and his people, my fellow Californian, and I disagree with him on issues—fought hard to give Bob Jones taxpayers' money.

Bob Jones University, discriminated against black people. They insisted that Bob Jones was entitled to tax exemptions. We said no.

But, so we don't kid ourselves; there is another bill, the Bob Dole bill in the Senate. Our bill H.R. 700 will not have an easy time of it in the Senate. It is going to be very difficult to enact this bill.

So with that sermon, if you will forgive me, Reverend Hart, I will yield to Mr. Kiko.

Mr. **Kiko**. Thank you, Mr. Chairman.

Reverend Hart, on the Senate side, Senator Dole introduced a bill, S. 272, which would reverse the *Grove City* situation and *North Haven* decision with regard to education activities only.

It would extend to educational funds and the other three statutes. Senator Hatch has a couple of amendments to that bill which he said he would support that bill if it were attached. One was it would exempt about 25 colleges similar to Grove City that are fiercely independent and do not want to have any kind of Government control.

The second would expand the current exemption in title 9, which exempts an educational institution that is controlled by a religious body, to an educational institution that is directed toward the promulgation of a particualr religion.

I think he is trying to get at such colleges as Notre Dame, which, and other universities and colleges, which are not controlled, but which are directed toward that.

Would you support S. 272 without or with those exemptions, or do you have any comment on that bill?

Reverend **Hart**. I read that bill. I don't have it in front of me and I don't remember all the details on it, since I was focusing my testimony on H.R. 700. But I remember getting the impression that I would be much more supportive of the Hatch amendment to this than H.R. 700 as it now stands.

Yet, you know, I know what segregation and discrimination is. And I am all for the Civil Rights Act and the civil rights bills where it clearly prevents this kind of discrimination.

But I think what is happening here is that we may be at the dilemma of two horns. One says let's end all discrimination. And the other one says, there is a possibility by doing it in a certain way that we might intrude upon religious freedoms of those. Now, which are we going to choose? It is my feeling that we don't really have to come to that choice. I think we can word this bill, which is good and clear in its intent, in such a way that we avoid the confrontation against religious freedoms for those religious institutions. I just think it is a matter of the way the bill is worded.

Mr. **Kiko**. Does anybody else have any comments on that bill?

Ms. Tracy, I have a question for you. Pennsylvania is one of the States that has adopted the State equal rights amendment. Can an educational institution be covered by both the State equal rights amendment and on to tile 9 of the education amendments?

Ms. TRACY. It depends upon which institution. Those that are State affiliated, yes. Those that are private institutions, there are some problems under the act in Pennsylvania. There is also an Educational Act in Pennsylvania that has broad coverage, I believe, that can help. But of course there are many States that don't have equal rights amendments.

Mr. KIKO. Right. I have no further questions, Mr. Chairman.

Mr. EDWARDS. Further questions?

Thank you very much, all of the witnesses have been very, very helpful.

Mr. EDWARDS. We will move into our final panel now, if Ms. Shane, Mr. Altman and Ms. Lillie would come to the witness table please.

We will come to the witnesses of the last panel. We have come from every part of the country to this great city to examine the views of distinguished Philadelphians and other people from this great State on H.R. 700, the Civil Rights Restoration Act of 1985.

Our first witness is Charisse Lillie, who represents the National Conference of Black Lawyers here in Philadelphia.

Ms. Lillie.

STATEMENTS OF ILENE SHANE, DEVELOPMENTAL DISABILITIES LAW PROJECT, PHILADELPHIA, PA; JEFFREY ALTMAN, AMERICAN SOCIETY OF CLINICAL PATHOLOGISTS, WASHINGTON, DC; AND CHARISSE LILLIE, NATIONAL CONFERENCE OF BLACK LAWYERS, PHILADELPHIA, PA

Ms. LILLIE. Thank you very much.

On behalf of the Philadelphia Chapter of the National Conference of Black Lawyers, I would like to speak in support of the passage by Congress of the Civil Rights Restoration Act of 1985. My presentation will focus on——

Mr. EDWARDS. Could you lift the microphone up a little bit?

Mr. HAYES. Pull it to you.

Ms. LILLIE. Today I am going to focus on the statute insofar as it amends title VI of the Civil Rights Act of 1964.

The Civil Rights Restoration Act of 1985 will resurrect the power of the United States to ensure that no recipient of Federal funds will spend Federal moneys while it is discriminating on the basis of race. Racial discrimination continues to gnaw away at the fabric of American society despite a plethora of State and Federal legislative remedies available to victims of discrimination.

Grover City College v. *Bell* severely curbs the ability of granting agencies to enforce the antidiscrimination provisions of title VI. Congress, pursuant to its powers under the spending clause, and pursuant to its enforcement powers under the 13th and 14th amendments, has a duty, I believe, a constitutionally mandated responsibility, to revive title VI, which has now been emasculated by the *Grove City* case.

In a letter to President Reagan in February of 1982, the U.S. Commission on Civil Rights charged that: congressional and executive branch initiatives to dismantle the essential Federal civil rights efforts in education threaten to reverse more than a generation of progress toward equal education opportunity.

A failure to enact the Civil Rights Restoration Act of 1985 will trumpet a loud, negative message to the American minority community.

Since 1964, the Office of Civil Rights has investigated thousands of complaints of racial discrimination in school districts all over the country. Because of cutbacks and a change in philosophy regarding how title VI is to be enforced, many institutions have been allowed to continue their discriminatory practices. Monitoring the quality of conformity with both contracts of assurance and compliance agreements has been minimal.

I hope today that you will be impressed by the irony of the argument I make to you today. The Federal Government, pre-*Grove City* was not imminently successful in rooting out much of the discriminatin being practiced by recipients of Federal funds.

Post-*Grove City,* enforcement will be virtually paralyzed as a result fo the Supreme Court's narrow construction of the term "program or activity." The enactment of the Civil Rights Restoration Act of 1985 will end the paralysis despite the policy of retrenchment on civil rights that has been adopted by the Reagan administration.

The Department of Justice has settled several major cases involving the desegregation of southern institutions of higher education requiring weak corrective measures. In January of 1985, the Justice Department argued to the U.S. Court of Appeals for the Fourth Circuit, that the city of Norfolk, Va., should be allowed to discontinue the busing of children for purposes of integrating the schools.

If Norfolk wins, they will end the busing of elementary school children this fall. Under the plan proposed by Norfolk, and supported by the Department of Justice, 10 of Norfolk's 35 elementary schools would become more than 96 percent black.

The Civil Rights Division of the Department of Justice is requesting that 50 States, cities, and counties modify their affirmative action court decrees to eliminate hiring goals and quotas. Unless an applicant could prove that he or she was an actual victim of past discrimination, they would not be eligible for consideration under an affirmative action plan.

[The prepared statement of Charisse R. Lillie follows:]

PREPARED STATEMENT OF PROF. CHARISSE R. LILLIE, ON BEHALF OF THE PHILADELPHIA CHAPTER, NATIONAL CONFERENCE OF BLACK LAWYERS

Congressmen, on behalf of the Philadelphia chapter of the National Conference of Black Lawyers, I would like to speak in support of the passage, by Congress, of the Civil Rights Restoration Act of 1985. I will focus on the statute insofar as it amends Title VI of the Civil Rights Act of 1964.

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Grove City College v. *Bell* severely curbs the ability of granting agencies to enforce the antidiscrimination provisions of Title VI. Congress, pursuant to its powers under the Spending Clause, and pursuant to its enforcement powers under the Thirteenth and Fourteenth Amendments, has a duty, a constitutionally mandated responsibility, to revive Title VI, which has now been emasculated by the *Grove City* case.

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I hope that you will be impressed by the irony of the argument I make to you today. The federal government, pre-*Grove City* was not imminently successful in rooting out much of the discrimination being practiced by recipients of federal funds. Post-*Grove City,* enforcement will be virtually paralyzed as a result of the Supreme Court's narrow construction of the term "program or activity." The enactment of the Civil Rights Restoration Act of 1985 will end the paralysis despite the policy of retrenchment on civil rights that has been adopted by the Reagan administration.

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The Civil Rights Division of the Department of Justice is requesting that 50 states, cities and counties modify their affirmative action court decrees to eliminate hiring goals and quotas. Unless an applicant could prove that he or she was an actual victim of past discrimination, they would not be eligible for consideration under an affirmative action plan.

These are but a few examples of the Reagan administration's retrenchment in the civil rights arena. The Congress should not become a partner in this policy of retrenchment which has been adopted by the executive branch. To the extent that the judicial branch is participating in this process in the *Grove City* case, *Grove City College* v. *Bell* must be overruled.

The policies underlying the Civil Rights Act of 1964 are being subverted by this narrow construction of the statute. The Congress has substantial constitutional authority to support its adoption of the Civil Rights Restoration Act of 1985. A failure to adopt this statute will be a giant step backward in the ongoing battle to ensure equality of opportunity for all Americans.

On behalf of the Philadelphia chapter of the National Conference of Black Lawyers, I thank you for consideration of our views.

Mr. EDWARDS. Are you connecting that with the *Grove City* decision?

Ms. LILLIE. No, sir; I am not connecting it to the *Grove City* decision. What I am saying is that these are but a few examples of the Reagan administration's retrenchment in the civil rights arena.

The Congress should not become a partner in this policy of retrenchment which has been adopted by the executive branch. To the extent that the Judicial Branch is participating in this process in the *Grove City* case, then *Grove City College* v. *Bell* must be overruled.

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On behalf of the Philadelphia chapter of the National Conference of Black Lawyers, I thank you for consideration of our views.

Mr. **Edwards**. Thank you very much, Ms. Lillie.

Mr. **Edwards**. Mr. Jeff Altman represents the American Society of Clinical Pathologists in Washington, DC.

Mr. Altman, you are welcome. You may proceed.

Mr. **Altman**. Mr. Chairman and Members of the committee and subcommittee, my name is Jeffrey P. Altman, and I am an attorney in private practice in Washington, DC. I appreciate the opportunity to appear today on behalf of the American Society of Clinical Pathologists to discuss H.R. 700 and other legislative proposals.

By way of background, ASCP, as it is commonly called, is a not-for-profit medical specialty society that is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

ASCP's active membership includes approximately 45,000 pathologists, clinical scientists, and medical technologists who work in medical laboratories throughout the United States. ASCP has been dedicated to serving the public health and welfare for over 50 years and ASCP prides itself in upholding the highest moral and ethical standards.

One of ASCP's many discrete activities is to conduct annual proficiency examinations and to certify medical technologists that satisfy ASCP's educational and testing requirements.

In 1977, an applicant requested special testing conditions on the grounds that she had dyslexia, a condition that allegedly caused her difficulty in reading. ASCP carefully considered her request for special testing conditions, but ultimately decided that the applicant's ability to read instructions and interpret data on her own in the day-to-day operations of a medical laboratory were among the skills that the ASCP examination was designed to test.

During the last 7 years, this applicant has subjected ASCP to protracted administrative and judicial review of its decision, alleging that ASCP violated her rights under the Rehabilitation Act of 1973.

The merits of her dispute have never been reached, however, because the Department of Health, Education, and Welfare and then the courts, held that ASCP's testing and certification activities did not constitute a program or activity that was a recipient of Federal financial assistance within the meaning of the Rehabilitation Act.

I have come here today, therefore, to state firsthand what a test in court under these statutes is required to face.

At the outset, ASCP would like to state for the record that it believes that the *Grove City College* decision was correct and should not be legislatively reversed. I have referred to *Grove City* throughout my statement, but the *Grove City College* is only one of several decisions that I believe address the program-specific requirements of the statute.

I believe earlier the Supreme Court indicated *North Haven Board of Education* v. *Bell*, that such a program-specific requirement was applicable due to the statutes, and I believe—I have not thoroughly researched it—but the cases in the Federal courts go back at least 5 or 6 years in which other courts had similarly held that the civil right statutes had program-specific requirement.

So when I say, when I refer to a reversal of *Grove City,* I am really referring to this five or six of a number of decisions that held that there were program-specific requirement applicable to these statutes.

Where an organization like ASCP conducts a number of discrete programs or activities, there is no reason why one program should be subject to the considerable expense of defending an enforcement action, merely because a wholly separate program or activity is a recipient of Federal financial assistance.

We believe the Supreme Court correctly determined that it was the original intent of Congress that enforcement authority should be extended only to those programs or activities within an organization that actually benefit from Federal financial assistance.

If Congress should decide to legislatively reverse *Grove City College* then it should do no more than return the law to where it stood prior to that decision. We believe H.R. 700 is more carefully drafted than its predecessor, but believe it would go beyond a mere reversal of *Grove City College* and would expand the civil rights statutes beyond their previous scope.

For example, the decision of the U.S. Court of Appeals for the Third Circuit in *Grove City College,* which H.R. 700 theoretically is designed to restore, indicated that the relevant program or activity would not be the entire institution in the case of Federal financial assistance that was earmarked or restricted for a specific purpose.

There is a small portion of the opinion in which the third circuit court indicated they were not addressing a case where an institution received an earmarked grant to be used for a specific purpose and didn't free funds for other parts of the organization.

The third circuit specifically reserved judgment in that case and said they were not going to rule on that. In my review of H.R. 700 I don't see the legislation preserves this exception any more. The way I read H.R. 700 basically, if any assistance went to a corporation, then the whole corporation or institution is covered.

And it doesn't make any difference if any piece of the assistance was specifically earmarked. Once again, if I could depart from my prepared statement, maybe I could give you an example of that just so it would make some sense.

The Federal assistance that ASCP received in this particular case was in 1977. Like I said, ASCP is an organization that includes about 9,000 pathologists whose practice specialty is laboratory medicine. They were approached by the Department of Health, Education, and Welfare back in 1977 and were told basically, you people do national programs on medical subjects. Would you please give a program on alcohol abuse and alcoholism as part of your national program next year.

ASCP agreed to do that. They needed approximately $30,000 to rent a hall, to pay the expenses for the speaker, and prepare published materials. That money that they received under that particular grant was restricted for that particular use. ASCP could not have used it for any other reason and they took the money.

And now, I would say in retrospect, I guess the point I am trying to make is if ASCP had known in 1977 that by accepting that $30,000 grant to put on an alcohol abuse program for the Department of Health, Education, and Welfare that they would have been subjected to 8 years of litigation and litigation costs many times the amount they received to cover their expenses, they probably wouldn't have done it.

Even in the past year or two, because ASCP has representatives in laboratories all around the United States, the Government in the form of the Department of Health and Human Services has come to ASCP on several occasions and has said:

> You have people in medical laboratories all around the country. We are changing the manner in which the Government funds Medicare and other Federal medical insurance programs. Could you collaborate with us and help us gather data to tell us how our changes in progams in Washington are affecting medical laboratories in the delivery of medical services out in the field.

Now the ASCP has come to me and said:

> If we were to take some money to specifically cover our costs to only produce the data the Government wants, can we be assured that we can't be sued and that we are not going to be therefore subjecting ourselves to this entire array of statutes and Federal regulatory controls?

And I have said to them:

> Under the statute as it existed last year as it was decided even by the Third Circuit Court of Appeals in *Grove City College*, yes, I think you can take that money because the Third Circuit Court of Appeals and Supreme Court, obviously with this program specific requirement, carried out this exception which says if you receive an earmarked grant and it can't be used for anything else then that is not enough to trigger the statutes.

If I were forced to answer that question though in the context of H.R. 700 I would have to say 700 reverses that law and takes it much farther than it ever was under the Third Circuit Court of Appeals decision.

What I say in my prepared testimony, therefore H.R. 700 would have a chilling effect on certain organizations. I refer to organizations such as ASCP, which basically believe they have higher moral and ethical standards than could ever be imposed by a law of the Congress but yet they don't want to subject themselves to years of endless litigation trying to defend their position and would therefore decline taking money under those circumstances.

That is the first way in which I think H.R. 700 expands coverage of the statutes prior to the way they existed before the *Grove City College* decision. Another example of the way in which H.R. 700 would expand the scope of coverage beyond that which existed prior to *Grove City College* is the extension of the statute to cover any other entity determined in a manner consistent with the new definition of program or activity.

This language is broad and ambiguous, and can serve no purpose other than to hold open the possibility that Federal agencies and the courts will have virtually unlimited discretion to decide that these statutes cover almost any conceivable situation that may arise.

Arguably, this language also could be used to support the contention that H.R. 700 was intended to expand the definition of Federal financial assistance to include non-monetary benefits, such as a

Federal income tax exemption, or indirect benefits, such as the receipt of food stamps by grocery stores. This ambiguity clearly needs to be eliminated.

I think that is one of the problems the legislation ran into in the last Congress, that everybody agreed that there should be some kind of legislation, that is those in favor of it, but the language was ambiguous so that you could not develop a consensus. I believe that is a particular ambiguity.

Looking at the rest of the statute I know what it is aimed at, either of the other subsections. I believe that particular subsection, which I believe is added to all four statutes, is a catch-all. I really don't think it serves any purpose and clouds the issue.

Finally, if Congress enacts H.R. 700, or a comparable bill, it should make clear that the proposed legislation will be prospective only in effect. Otherwise, organizations such as ASCP may be subjected to enforcement actions based on statutory provisions that were not applicable at the time the events in question may have occurred.

I would note if you are trying to develop a national consensus to clarify the law and make it applicable in a particular way it is going to be more difficult to develop the consensus if organizations don't know whether you intend the law to be prospective or retroactive.

If ASCP were to find out that your bill was to make it retroactive so this person could reinitiate all the litigation under the new law it would be much more difficult to reach a consensus.

In summary, ASCP believes that the *Grove City College* decision was correct and should not be legislatively reversed. If there is going to be new legislation, however, it should not expand the law beyond its coverage prior to the *Grove City College* decision.

Congress should not eliminate the exception to institution-wide coverage for earmarked or restricted grants and assistance. Congress also should not expand the definition of Federal financial assistance to include nonmonetary benefits, such as a Federal income tax exemption, or other remote forms of indirect benefits.

Above all else, ASCP asks that any legislation clearly state the coverage intended by Congress. The inclusion of vague and ambiguous language will inevitably result in open-ended and ever expanding interpretations of these statutes that will force public service organizations like ASCP to waste their scarce resources addressing questions of congressional intent and statutory coverage for years to come.

Although there are many differences of opinion whether there should be new legislation, and, if so, what that legislation should be, Congress should reflect the results of its deliberations in clear and unambiguous terms that will help ASCP and other organizations and avoid years of protracted and wasteful litigation.

I thank you for the opportunity to appear this afternoon.

Mr. EDWARDS. Thank you very much, Mr. Altman.

[Prepared statement of Jeffrey P. Altman follows:]

PREPARED STATEMENT OF JEFFREY P. ALTMAN, ON BEHALF OF THE AMERICAN SOCIETY OF CLINICAL PATHOLOGISTS

Mr. Chairman and Members of the Committee and Subcommittee, my name is Jeffrey P. Altman and I am an attorney in private practice in Washington, D.C. I appreciate the opportunity to appear today on behalf of the American Society of Clinical Pathologists to discuss H.R. 700 and other legislative proposals to amend the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975 and Title VI of the Civil Rights Act of 1964, to legislatively reverse the decision of the United States Supreme Court in Grove City College v. *Bell*, 52 U.S.L.W. 4283 (February 28, 1984).

By way of background, ASCP, as it is commonly called, is a not-for-profit medical specialty society that is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code. ASCP's active membership includes approximately 45,000 pathologists, clinical scientists and medical technologists who work in medical laboratories throughout the United States. ASCP has been dedicated to serving the public health and welfare for over fifty years and ASCP prides itself in upholding the highest moral and ethical standards.

One of ASCP's many discrete activities is to conduct annual proficiency examinations and to certify medical technologists that satisfy ASCP's educational and testing requirements. In 1977, an applicant requested special testing conditions on the grounds that she had dyslexia—a condition that allegedly caused her difficulty in reading. ASCP carefully considered her request, but ultimately decided that the applicant's ability to read instructions and interpret data on her own in the day-to-day operations of a medical laboratory were among the skills that the ASCP examination was designed to test.

During the last six years, this applicant has subjected ASCP to protracted administrative and judicial review of its decision, alleging that ASCP violated her rights under the Rehabilitation Act. The merits of her dispute have never been reached, however, because the Department of Health, Education and Welfare and then the courts, held that ASCP's testing and certification activities did not constitute a program or activity that was a recipient of federal financial assistance within the meaning of the Rehabilitation Act. See *Bachman* v. *American Society of Clinical Pathologists*, 577 F. Supp. 1257 (D.N.J. 1983), appeal dismissed, —— F.2d —— (3d Cir. Dec. 20, 1984). ASCP thus speaks with firsthand experience on the enforcement questions that necessarily are raised by the proposed legislation.

At the outset, ASCP would like to state for the record that it believes that the *Grove City College* decision was correct and should not be legislatively reversed. Where an organization like ASCP conducts a number of discrete programs or activities, thee is no reason why one program should be subject to the considerable expense of defending an enforcement action, merely because a wholly separate program or activity is a recipient of federal financial assistance. The Supreme Court correctly determined that it was the original intend of Congress that enforcement authority should be extended only to those programs or activities within an organization that actually benefit from federal financial assistance.

If Congress should decide to legislatively reverse *Grove City College* than it should do no more than return the law to where it stood prior to that decision. H.R. 700, although morle carefully crafted than its predecessors in the previous Congress, would still go beyond a mere reversal of *Grove City College* and would expand the civil rights statutes beyond their previous scope.

For example, the decision of the United States Court of Appeals for the Third Circuit in *Grove City College*, which H.R. 700 theoretically is designed to restore, indicated that the relevant program or activity would not be the entire institution in the case of federal financial assistance that was earmarked or restricted for a specific purpose. As presently drafted, however, H.R. 700 would not preserve this limited exception. H.R. 700 would therefor have a chilling effect on the willingness of organizations such as ASCP to participate in discrete federal programs that otherwise would benefit the general public.

Another example of the way in which H.R. 700 would expend the scope of coverage beyond that which existed prior to *Grove City College* is the extension of the statute to cover "any other entity determined in a manner consistent" with the new definition of "program or activity." This language is broad and ambiguous, and can serve no purpose other than to hold open the possibility that federal agencies and the courts will have virtually unlimited discretion to decide that these statutues cover almost any conceivable situation that may arise. Arguably, this language also could be used to support the contention that H.R. 700 was intended to expand the definition of "federal financial assistance" to include non-monetary benefits, such as a federal income tax exemption, or indirect benefits, such as the receipt of food stamps by grocery stores. This ambiguity clearly needs to be eliminated.

Finally, if Congress enacts H.R. 700, or a comparable bill, it should make clear that the proposed legislation will be prospective only in effect. Otherwise, organizations such as ASCP may be subjected to enforcement actions based on statutory provisions that were not applicable at the time the events in question may have occurred.

In summary, ASCP believes that the *Grove City College* decision was correct and should not be legislatively reversed. If there is going to be new legislation, however, it should not expand the law beyond its coverage prior to the *Grove City College* decision. Congress should not eliminate the exception to institution-wide coverage for earmarked or restricted grants and assistance. Congress also should not expand the definition of federal financial assistance to include non-monetary benefits, such as a federal income tax exemption, or other remote forms of indirect benefits.

Above all else, ASCP asks that any legislation clearly state the coverage intended by Congress. The inclusion of vague and ambiguous language will inevitably result in open-ended and ever expanding interpretations of these statutes that will force public-service organizations like ASCP to waste their scarce resources addressing questions of Congressional intend and statutory coverage. Although there are many differences of opinion whether there should be new legislation, and, if so, what that legislation should be, Congress should reflect the results of its deliberations in clear and unambiguous terms that will help ASCP and other organizations avoid years of protracted and wasteful litigation.

Mr. **Edwards**. The last member of this panel is Ilene Shane, representing developmental disabilities law project here in Philadelphia.

Ms. Shane.

Ms. **Shane**. Good afternoon. My name is Ilene Shane. I am the director of the developmental disabilities law project and I am here on behalf of both the clients of our law project, who are developmentally disabled individuals throughout Pennsylvania, and the clients of the Public Interest Law Center of Philadelphia, which is the Philadelphia office of the Lawyers Committee on Civil Rights.

We have prepared fairly lengthy comments which we have submitted. What I would like to do in my oral testimony is simply make reference to four points and for more detailed discussion refer you to the written comments.

Mr. **Edwards**. Without objection, all the statements will be made a part of the record.

Ms. **Shane**. Thank you.

While most of what I will say is equally applicable to all the civil rights bills which are under consideration, my focus will be limited to the effect of H.R. 700, or failure to pass H.R. 700 on individuals with handicaps and specifically therefore section 504 of the Rehabilitation Act.

The essential question before this committee and before Congress is the extent to which there continues to be a commitment to end discrimination against racial minorities, women and people who are handicapped or aged.

If this commitment continues to exist this Congress must pass H.R. 700 to close the loophole which has been created by the *Grove City* decision.

Essentially, the *Grove City* decision permits recipients of Federal funds to insulate their discriminatory activities from their Federal money.

As this committee has heard this morning, and I am sure will continue to hear, that while discrimination still exists, we have made tremendous strides since the passage of the civil rights legislation. Without H.R. 700 we will not continue to make progress and we will lose much of the progress we have made.

The essential question is, to what extent does the Federal Government wish to support through extending Federal money to institutions, organizations and agencies which discriminate? H.R. 700 is a return to the prior practice. By that I mean the prior practice to *Grove City*. We have, and there is no question, a split in the case law prior, even prior to *Grove City* as to whether the civil rights laws are program specific, or institutionwide.

But there is no question as to what executive branch practices were in effect *Grove City*. We have in the Department of Justice regulations, which are by Executive order the coordinating regulations for all Federal agency civil rights enforcement, specific language which states, and I am reading from the comments to the regulations, that section 504 is applicable to all operations of the recipient agency or department, although the Federal financial assistance may have been used in only certain of the activities or operations of the agency or department. There is no question that the intention of the Department of Justice regulations were not program specific but were institutionwide.

There is no question that agencies understood them to be institutionwide, and acted accordingly. And while the courts have been split on this question, the practice has been in conformance with the Department of Justice regulations.

I think it is important to note what H.R. 700 is not. It is not a bill which addresses what is Federal assistance. It is not a bill which defines discrimination. There has been much discussion by both the prior speaker and earlier of indirect beneficiaries. These questions are not addressed through H.R. 700. They are answered under the legislation and prior court decisions.

Grove City, for example, specifically found that the rate of the so-called indirect benefits of student grants—these are not altered by H.R. 700. And, importantly, the so-called pinpoint provisions, the fact that the authority of the Federal agencies to terminate Federal funding continues to be program specific, both under H.R. 700 and under the law as it existed prior to H.R. 700.

The effect of H.R. 700 is simply to change the scope of the coverage of the civil rights laws from program specific scope to institutionwide scope. I think that the case which the rior speaker discussed, the *Backman* v. *Society of Clinical Pathologists* case, raises some of the questions that this bill addressed.

The defendant in that case provided the testing for entrance to entire professions. The defendant has within its capacity to exclude from professions, in this case, handicapped individuals. The court was unable to reach the question of whether discrimination occurred against the applicant in question.

It would seem that an effective enforcement of the civil rights laws would require that we want the courts and we want the agencies to reach discrimination wherever possible.

Thank you.

[Prepared statement of Ilene Shane follows:]

PREPARED STATEMENT OF ILENE W. SHANE, ESQ.

We appreciate the opportunity to testify in support of H. R. 700. We appear on behalf of the Developmental Disabilities Law Project (DDLP) and the Public Interest Law Center of Philadelphia (PILCOP), both of which are major civil rights advocacy centers.

DDLP is a legal back-up center for the Protection and Advocacy Agency of the Commonwealth of Pennsylvania established pursuant to Section 113 of the Developmental Disabilities and Bill of Rights Act.* DDLP represents individuals and their organizations in cases involving handicap discrimination throughout Pennsylvania. PILCOP, the Philadelphia affiliate of the Lawyers' Committee for Civil Rights Under Law, is involved in major litigation concerning race, sex, age, and handicap discrimination. We are here today because of the importance of this legislation for the individuals and organizations we represent.**

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*42 U.S.C. § 6012.

**Some of our clients recently have included the American Coalition of Citizens with Disabilities, the Pennsylvania Coalition of Citizens with Disabilities, Disabled In Action of Pennsylvania, the Handicapped Advocacy Network of Delaware, Disabled In Action of Baltimore, The New York State Coalition of People with Disabilities, the Vermont Center for Independent Living, Paralyzed Veterans of America, the Association of Retarded Citizens/US, the Pennsylvania Association of Retarded Citizens, the North Philadelphia Chapter of the NAACP, the Guardian Civic League, the Philadelphia Council of Neighborhood Organizations, Fairless Black Caucus, Black Professionals in Accounting, the Educational Equality League, the Western Electric Black Caucus, the Affirmative Action Coalition of Philadelphia, the National Council of Senior Citizens, the Gray Panthers, the Pennsylvania Association of Older Persons, the National Caucus on the Black Aged, the Action Alliance of Senior Citizens, and the Coalition of Advocates for the Rights of the Infirm Elderly.

Our sole interest is to insure equal opportunities for all groups protected by federal civil rights legislation. Since others today have focussed upon the need for broad protection for racial minorities, women, and elders, our testimony emphasizes the need for broad coverage of handicap discrimination and draws chiefly upon the regulations, the case law, and the legislative history of Section 504. However, the points we make apply with equal weight to the other statutes affected by the bill.

From its inception, Section 504 of the Rehabilitation Act has been viewed as the Disabled Persons' Civil Rights Act, and the key to overcoming the barriers to persons with handicaps achieving full integration into American society.

In adopting Section 504, the Congress avowedly acted pursuant to its constitutional powers under Section 5 of the Fourteenth Amendment. According to Senator Humphrey, the Senate sponsor, "This bill responded to an awakening public interest in millions of handicapped children, youth, and adults who suffer the profound indignity and despair of isolation, discrimination, and maltreatment."* He then stated, unequivocably, that it was "essential that the right of these forgotten Americans to equal protection under the laws be effectively enforced," an unambiguous reference to the right to equal protection guaranteed by the Fourteenth Amendment.

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*118 Cong. Rec. S9495 (daily ed., March 22, 1972).

Absent the enactment of H. R. 700, recipients of federal funds will be able to avoid compliance with Section 504 by insulating their federal funds from their discriminatory practices. Congress mandated that public funds not be spent in any fashion that encourages, entrenches, or results in the exclusion of persons with handicaps and that equal access to *all* the programs and activities of hospitals, universities, state agencies, public schools, mass transit and other federally funded programs be guaranteed by law. Since the passage of Section 504, we have seen a new awareness by the general public of the rights of persons with handicaps. Pursuant to the regulations promulgated by the then Department of Health, Education and Welfare to implement Section 504**, recipients of federal funding began the voluntary process of evaluating and, where necessary, modifying their policies and practices, to open their programs and activities to persons with handicaps. The vast majority of the changes resulting from the passage of Section 504 were a product of voluntary compliance with the statute and its implementing regulations. Ramps were built, for wheelchair users, auxiliary aids were provided to assist those with special needs, non-essential program requirements were modified, and blanket exclusionary policies were abandon Only in those relatively rare instances in which voluntary compliance was not achieved have enforcement by federal agencies and by direct court actions been necessary.

**Id.* (emphasis provided). Both Senator Humphrey and Representative Vanik, the House Sponsor, noted that Section 504 was designed to enforce the rights found by the federal court in *Pennsylvania Association for Retarded Children v. Pennsylvania*, which, they reported, involved "a violation of the equal protection clause of the 14th amendment." 117 Cong. Rec. H45974-75 (Dec. 9, 1971); 118 Cong. Rec. S525 (Jan. 20, 1972).

**42 Fed. Reg. 22675 (May 4, 1977).

Whether we are concerned with voluntary compliance, agency enforcement or court action, the threshold question is the scope of coverage of the law. Without H. R. 700, prohibitions against discrimination would be limited to those specific programs to which federal money definitely can be traced. Such a narrow application of Section 504 falls far short of implementing the intent of Congress,* is inconsistent with long-standing executive policy, and renders federal agencies and the courts powerless to reach even the most blatant forms of discrimination.

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*The debate in the House and Senate surrounding the passage of early versions of Section 504 reflects the view of the law as providing extensive coverage. See, e.g., 117 Cong. Rec. H45975 (1971)(Rep. Vanik)("My proposed legislation will insure equal educational and employment opportunities for the handicapped by making discrimination illegal in federally assisted programs and activities."); 118 Cong. Rec. S526 (1972)(Sen. Percy)(The bill would "guarantee the handicapped equal opportunity to education, job training, productive work, due process of law, a decent standard of living, and protection from exploitation, abuse and degradation.").

The description of the bill that eventually was enacted corresponded with the description of the earlier bill. The sponsors intended extensive coverage. See, e.g., id. at S24587 (Sen. Randolph)("These [provisions] will help expand the vistas of opportunity for handicapped individuals across our land."); id. (Sen. Williams)("The Committee also found it necessary ... to grapple with problems, which while not related solely to rehabilitation, pose serious problems for handicapped individuals in becoming employed, staying employed, and generally supporting themselves within their communities. In this respect the Committee payed [sic] special attention to the problems of employment discrimination, lack of housing and transportation facilities, and the prevalence of architectural and transportation barriers.").

(footnote continued)

Congress in the 1978 attorney fees amendments to Title V of the Rehabilitation Act recognized the importance of private enforcement of Section 504 in the courts. What the Senate Committee noted at that time, is as true today as it was then: "The rights extended to handicapped individuals under Title V are, and will remain, in need of constant vigilance by handicapped individuals to assure compliance." By and large handicapped people have used the courts to challenge discriminatory and exclusionary practices only when all other methods of redress have failed. The great majority of large and small recipients have seriously gone about the business of implementing Section 504 and including handicapped people in their programs. Individual complaints and grievances have been resolved through informal processes and negotiations and a continuing process of educating recipients as to the discriminatory impact of past practices. However, when necessary, handicapped persons have litigated to enforce their Section 504 rights--most often against large state agencies and public authorities receiving

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* continued

Amending the definition of "qualified handicapped individual" for the purposes of Section 504, to clarify that it intended to cover a wider range of programs, not just employment-related programs, Congress reaffirmed that that statute establishes "a broad government policy that programs receiving Federal financial assistance shall be operated without discrimination on the basis of handicap." S. Rep. No. 1297, 93th Cong., 2d sess. 39 (1974); see also H. R. Rep. No. 147, 93d Cong., 2d sess. 27 (1974).

substantial amounts of federal financial assistance.

In *Nelson v. Thornburgh*,* for example, blind employees of the Pennsylvania Department of Public Welfare successfully challenged that state agency's practice of not providing readers to enable blind caseworkers to carry out the essential functions of their jobs. The state department, which disbursed over 2 billion dollars in federal monies in 1983 and received almost $150 million in federal monies to administer its welfare programs, argued unsuccessfully in court that it would be an undue hardship to provide part-time readers for three blind employees at a cost of $6,638 per year per blind employee. In *Lloyd v. Illinois Regional Transit Authority*,** *United Handicapped Federation v. Andre*,*** *Disabled In Action of Pennsylvania v. Coleman***** and other cases, handicapped people used Section 504 in the courts to achieve access to mass transit programs receiving billions of federal dollars. Even in those transportation cases where handicapped persons were not completely successful, courts there affirmed the judicial interpretation that "504 does require ... affirmative steps to accommodate the handicapped in public transportation.*****

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*567 F.Supp. 369 (E.D. Pa. 1983), *aff'd*, 35 F.E.P. Cases 835 (3d Cir. 1984), *cert. denied*, 53 U.S.L.W. 3527 (U.S. Jan. 22, 1985)(No. 83-1864).

**548 F.2d 1277 (7th Cir. 1977).

***558 F.2d 413 (8th Cir. 1977).

****448 F.Supp. 109 (E.D. Pa. 1978).

*****_Dopico v. Goldschmidt_, 687 F.2d 644, 652 (2d Cir. 1982).

The gradual gains handicapped persons have made under Section 504 through common sense interpretations of the law and regulations would most certainly be wiped out if the program-specific limitations of Grove City are permitted to continue as the law of the land. To place upon individual handicapped persons excluded from employment, services, and schooling by large state agencies, universities and hospitals, the enormous burden of tracing federal funds to specific programs would not just limit the effectiveness of private enforcement but render the Section 504 civil rights charter a dead letter.

Prior to the Supreme Court's Grove City decision, numerous lower courts giving thoughtful consideration to the "program or activity" language of the federal civil rights statutes affected by H. R. 700 recognized the importance of construing that term to include all aspects of an institution that receives public funds. Those cases decided, correctly in our view, that a narrower construction quite simply defies common sense.

First, the courts pointed to the ease with which recipients would be able to circumvent the law. A circumscribed construction "would allow major institutions receiving substantial amounts of federal aid to dissect themselves, at whim, into discrete entities, to allocate federal dollars into programs which cannot discriminate against handicapped persons, and to free privately obtained funds from those programs and instead to channel such money into programs purportedly immune from Section 504 strictures. [Such a] construction of Section 504 would sanction this circumvention of federal policy against discrimination for institutions benefiting from federal aid."* "[I]f it had to be demonstrated that each individual component of an integrated educational institution had in fact received the particular monies for a particular purpose, no termination sanction could ever effectively be imposed."** A recipient cannot be permitted to simply "change the allocation of funds to [another part of its operations] in order to avoid the effects of [the statute]."*** Thus, the reach of Section 504 should not turn on the methods by which a recipient undertakes to do its bookkeeping.****

Second, the cases have noted the benefit to all of its operations that a recipient receives from Federal financial assistance. For example, "federal aid to any program in a school system releases local money for other uses," thereby benefiting all operations of a recipient."* "To the extent the [recipient] receives federal funding, component entities thereof benefit indirectly through the reallocation of funds received from other sources."**

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*Wright v. Columbia University, 520 F.Supp. 789, 792 (E.D. Pa. 1981).

**Grove City College v. Bell, 687 F.2d 686, 700 (3d Cir. 1982), rev'd, 104 S.Ct. 1211 (1984); accord, Haffer v. Temple University, 524 F.Supp. 531 (E.D.Pa. 1981), aff'd, 688 F.2d 14 (3d Cir. 1982).

***United States v. City of Chicago, 549 F.2d 415, 442 (7th Cir. 1977).

****It might be argued that a recipient such as a hospital could still be brought within the coverage of Section 504 if it could be shown that it had intentionally allocated its federal assistance in a way that would avoid the consequences of the statute, for example, by allocating no federal funds to an activity that it wants to use as a vehicle for discrimination. There would be enormous difficulties of proof imposed upon handicapped litigants forced to rely on such a legal theory.

Third, the courts have pointed to the congressional purpose of broadly preventing discrimination, an intent that would be undermined by permitting certain slices of a recipient's functions to continue to discriminate. Such illegal activity inevitably affects all of a recipient's operations. As Judge Ackerman, pre-_Grove City_, concluded in denying a motion to dismiss a complaint based on Section 504: "It seems absurd to ban discrimination in a discrete area of a school system that receives federal funds while permitting it throughout the rest of the system."***

All of these well-reasoned decisions were overruled by the Supreme Court in its _Grove City_ decision.

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*_Poole v. South Plainfield Board of Education_, 490 F.Supp. 948, 951 (D. N.J. 1980); _accord_, _Grove City College v. Bell_, 687 F.2d at 698-99; _Bob Jones University v. Johnson_, 396 F.Supp. at 602-03; _Haffer v. Temple University_, 524 F.Supp. at 537.

**_Wright v. Columbia University_, 520 F.Supp. at 792.

***_Poole v. South Plainfield Board of Education_, 490 F.Supp. at 951; _accord_, _Iron Arrow Honor Society v. Schweiker_, 652 F.2d 445, 447 (5th Cir.), _vacated and remanded_, 102 S.Ct. 2264 (1981); _Bossier Parish School Board v. Lemon_, 370 F.2d 847 (5th Cir.), _cert. denied_, 388 U.S. 911 (1967); _United States v. Jefferson County Board of Education_, 372 F.2d 836, 850, _aff'd en banc_, 380 F.2d 385 (5th Cir. 1966), _cert. denied_, 389 U.S. 840 (1967); _Haffer v. Temple University_, 524 F.Supp. at 537; _Wright v. Columbia University_, 520 F.Supp. at 792; _Yakin v. University of Illinois_, 508 F.Supp. 848, 850 (N.D. Ill. 1981); _United States v. El Camino Community College District_, 454 F.Supp. 825, 830 (C.D. Cal. 1978), _aff'd_, 600 F.2d 1258 (9th Cir. 1979), _cert. denied_, 444 U.S. 1013 (1980).

Moreover, the decisions in the minority of cases that have taken the narrower view aptly illustrate the need for H. R. 700. For example, in Brown v. Sibley,* three blind employees of the Mississippi Industries for the Blind, a state agency, sued the agency, alleging that they had been denied promotions to supervisory positions for which they were qualified, solely because of their blindness. Though noting the cruel irony that the very purpose of the agency was to provide training and employment to visually impaired persons, the court refused to decide the merits of the employees' appeal because they could not trace the agency's federal funds to the particular component of the agency that employed them.

Similarly, in Bachman v. American Society of Clinical Pathologists* a handicapped applicant challenged policies of the Society's Board of Registry that, she alleged, precluded qualified handicapped persons from entering a wide range of professions that included pathologists, clinical scientists, and medical laboratory personnel. Once again, the court refused to decide the merits of this serious claim since the applicant could not trace any of the Society's federal funds to its certification program.

We believe these results are patently unfair. How are we to effectuate the purpose of Section 504, to eliminate disability-based prejudice, if we cannot reach the merits of discrimination claims? It is possible, of course, that no discrimination took place in either of the above illustrations. With the decision in Grove City, however, we will never know. Indeed, without H. R. 700, there is no federal law that would prevent either of these recipients, or countless others, from hanging a sign on their front doors stating "NO HANDICAPPED PEOPLE NEED APPLY."

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*650 F.2d 760 (5th Cir. 1981).

**577 F.Supp. 1257 (D. N.J. 1983).

That is not the result intended either by the Congress in enacting Section 504 or the executive branch, in enforcing it. The bill's statement of Congressional findings accurately states (§ 2) that prior to the Supreme Court's decision in Grove City College, the "consistent and long-standing executive branch interpretation" of the civil rights laws at issue unquestionably was "broad, institution-wide application of those laws." Prior to Grove City, "a number of federal agencies ... treated the scope of these statutes as broader than the program-specific interpretation";* executive branch enforcement policy opted, for broad coverage. Any possible ambiguity in the pre-Grove City executive branch position was clarified by regulations issued by the Department of Justice in 1980 specifically defining the term "program" to mean "the operation of the agency or organizational unit of government receiving or substantially benefiting from the federal assistance awarded, e.g., a police department or department of corrections."* Leaving no room for gainsaying, the official Justice Department analysis of this provision flatly stated: "The term 'program' includes activities where payments are made by a Federal agency to ultimate beneficiaries on condition of their participation in a program conducted by a recipient. The receipt of federal financial assistance by, for example, a law enforcement agency or department of corrections, makes Section 504 and this subpart applicable to all operations of the recipient agency or department although the federal financial assistance may have been used in only certain of the activities or operations of the agency or department."**

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*Memorandum from Mark R. Disler to Linds Chavez, Staff Director, Civil Rights Commission (February 4, 1985).

The Disler Memorandum attempts to cast some doubt on the bill's Congressional finding as to the pre-Grove City executive position (p.22). As explained herein, the finding in § 2 of the bill, however is well-founded. Moreover, the Disler Memorandum's attempt to use the legislative history and court decisions to refute this finding is irrelevant. Had the Supreme Court not interpreted Title IX to be program specific, H. R. 700 would not be necessary. The important point is that the executive agencies long ago rejected Mr. Disler's current analysis of that history and, as noted herein, Mr. Disler concedes that the agencies' construction was a "reasonable" and "responsible" one (pp.3, 9).

This official administrative construction is particularly significant since, pursuant to an executive order,*** the author of this regulatory definition, the Justice Department was designated by the President as the lead, coordinating authority for executive branch enforccment of Title VI, Title IX,

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*45 Fed. Reg. 37620, 37626, codified at 28 C.F.R. § 42.540(h).

**45 Fed. Reg. 37632. The Disler Memorandum unaccountably ignores this important executive branch construction.

***Executive Order No. 12250.

Section 504, and the Age Discrimination Act.*

In contrast to the broad application given to the coverage of Section 504, federal agencies have taken a narrower view of the remedial actions available to them once they have made a finding of discrimination, and those limitations are carried through in this bill.

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*In a recent case decided after Grove City involving Section 504, the Supreme Court looked to executive agency regulations construing that law "as an important source of guidance." Alexander v. Choate, 105 S.Ct. 712, 722 n.24 (1985), citing Conrail v. Darrone, 104 S.Ct. 1248 (1984)(holding that the 1978 amendments to the Rehabilitation Act intended to codify regulations enforcing § 504). In Alexander the Supreme Court also unequivocably rejected the Disler Memorandum's parsimonious interpretation of Section 504 as "a nondiscrimination statute, not an affirmative action statute" (p.7 n.12). The Alexander Court noted, illustratively, that "elimination of architectural barriers was one of the central aims of the Act," 105 S.Ct. at 719, and held that "an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers. The benefit itself, of course, cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made." Id. at 721. As the Solicitor General of the United States urged at oral argument in that case, pursuant to Section 504 "special measures for the handicapped ... may sometimes be necessary." Quoted in id. at 721 n.721.

Section 504 was originally enacted without the aid of an enforcement mechanism. Since Section 504 was patterned after Title VI, federal agencies, when seeking such a mechanism for Section 504, logically incorporated the procedures that Congress had ordained for Title VI, found in Section 602 of that Title.* Section 602 directs federal agencies that extend federal financial assistance to effectuate Section 601 by issuing regulations that are "consistent with achievement of the objectives of the statute authorizing the financial assistance...." Section 602 provides further that compliance may be effected (1) by the termination of assistance, after opportunity for an administrative hearing and the making of specified findings, or (2) "by any other means authorized by law." A termination order must be limited to "the particular political entity, or part thereof, or other recipient as to whom ... a finding [of noncompliance] has been made" and must also be "limited in its effect to the particular program, or part thereof, in which such noncompliance has been found." Thus the question of _coverage_ by Section 504 is not identical to the question of what assistance can be terminated for noncompliance. Termination is one means of enforcement, but not the sole means. The primary "other means" is a lawsuit to enjoin the discriminatory practices. The statutory restriction of "program or part thereof" in Section 602 applies to the termination sanction, but not to enforcement through injunctive writs. The lack of limitation on the "any other means provided by law," after fund termination was expressly limited, is strong evidence that Congress intended no formal limitations on this power. Congress left unfettered the ability of the federal government to seek other remedies or of private persons to seek remedies other than fund termination directly under Section 601. To insist that the "or part thereof" language must be read into the general prohibitory language of Section 601 and, therefore, into Section 504, ignores this important and reasonable distinction that Congress sought to draw.* Terminating federal financial assistance often will have the effect of punishing not only recipients as a result of their discriminatory conduct, but also blameless beneficiaries of the recipients' services.** Thus, it is reasonable that Congress would put limits on the use of that remedy. No such rationale exists, however, for restricting the use of other remedies, such as seeking injunctive relief, nor would such a limitation comport with the intended coverage of Section 504. That is why H. R. 700 retains the current limitations on the remedy federal agencies may invoke, and amends only the overall coverage of the statutes.

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*42 U.S.C. § 2000d-1; _see_, _e.g._, 45 C.F.R. § 84.61.

A recipient of federal funds ought to be required, pursuant to Section 504, to be the protector of handicapped people's rights to nondiscrimination throughout its operations, regardless of whether any funds are channeled to particular components. Any other conclusion would substantially eviscerate the scope of the law, to a de minimis point.

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*The Disler Memorandum, for example, makes this analytical mistake in its discussion of the statutes.

**See Board of Public Instruction of Taylor County v. Finch, 414 F.2d 1068, 1076 (5th Cir. 1969).

code of federal regulations

Hall

Judicial Administration

28

Revised as of July 1, 1984

AMERICAN LAW DIVISION

any successor, assignee, or transferree of a recipient, but excluding the ultimate beneficiary of the assistance.

(f) "Federal financial assistance" means any grant, cooperative agreement, loan, contract (other than a direct Federal procurement contract or a contract of insurance or guaranty), subgrant, contract under a grant or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government;

(4) Any other thing of value by way of grant, loan, contract or cooperative agreement.

(g) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) The term "program" means the operations of the agency or organizational unit of government receiving or substantially benefiting from the Federal assistance awarded, *e.g.*, a police department or department of corrections.

(i) "Ultimate beneficiary" is one among a class of persons who are entitled to benefit from, or otherwise participate in, programs receiving Federal financial assistance and to whom the protections of this subpart extend. The ultimate beneficiary class may be the general public or some narrower group of persons.

(j) "Benefit" includes provision of services, financial aid or disposition (*i.e.*, treatment, handling, decision, sentencing, confinement, or other prescription of conduct).

(k) "Handicapped person". (1) "Handicapped person" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. For purposes of employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(2) As used in this subpart the phrase:

(i) "Physical or mental impairment" means: (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; (B) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug and alcohol abuse.

(ii) "Major life activities" mean functions such as caring for one's self, performing manual tasks walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means: (A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of

504." Sen. Rep. No. 95–890, 95th Cong., 2d Sess. (1978). *Cf. Cannon v. University of Chicago*, 441 U.S. 677 (1979). Nothing in this subpart requires the referral of a complaint against a recipient to the Department for action as a legal prerequisite for filing a lawsuit against the recipient.

The term "recipient" (§ 42.540(e)) in LEAA programs includes State and local governments, Criminal Justice Councils, Local Offices, criminal justice coordinating councils, nonprofit institutions, contractors, under grants and any other recipient of LEAA funds. Recipients in Federal Bureau of Investigation programs include law enforcement agencies serving municipalities, counties or States. Recipients in Federal assistance programs of the National Institute of Corrections of the Bureau of Prisons include States, general units of local government, as well as public and private agencies, educational institutions and organizations and individuals involved in the development, implementation or operation of correctional programs and services. Recipients in Drug Enforcement Administration programs include State and local governments, officials of law enforement agencies and forensic laboratories. A recipient not only includes a primary recipient (*i.e.*, a recipient which receives Federal financial assistance from a Federal agency directly) but also a second-tier recipient (*i.e.*, a recipient which receives Federal financial assistance through the primary recipient). The term does not include the ultimate beneficiaries of the program (*i.e.*, those for whom the Federal financial assistance is designed to benefit).

The term "Federal financial assistance" (§ 42.540(f)) includes any arrangement by which the Department provides or makes available funds, property, services, or anything of value by way of grants, contracts, loans or cooperative agreements including subgrants and contracts under grants. It does not include licenses, for example, since licenses are not Federal assistance grants, contracts, loans or cooperative agreements. Nor does the term include direct Federal procurement contracts. Procurement contracts are generally used whenever the principal purpose of the transaction is the acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government. Federal assistance contracts, grants, loans and cooperative agreements are used whenever the principal purpose of the transaction is to accomplish a public purpose authorized by Federal statute.

A "program" (§ 42.540(h)) includes any activity or facility receiving Federal financial assistance whether such benefits are provided directly with the aid of Federal financial assistance or with the aid of any non-Federal assistance required to meet the conditions of Federal financial assistance. The term "program" includes activities where payments are made by a Federal agency to ultimate beneficiaries on condition of their participation in a program conducted by a recipient. The receipt of Federal financial assistance by, for example, a law enforcement agency or department of corrections, makes section 504 and this subpart applicable to all operations of the recipient agency or department although the Federal financial assistance may have been used in only certain of the activities or operations of the agency or department.

Drug and alcohol abuse are "physical or mental impairments" within the meaning of section 7(6) of the Rehabilitation Act of 1973, as amended. Accordingly, drug and alcohol abusers are handicapped under section 504 if their impairment substantially limits one of their major life activities (§ 42.540(k)(2)(i)(C)). "Drug abuse" in this subpart is defined as (1) the *use* of any drug or substance listed by the Department (21 CFR 1308.11) under authority of the Controlled Substances Act (21 U.S.C. 801), as a controlled substance unavailable for prescription, or (2) the *misuse* of any drug or substance listed by the Department (21 CFR 1308.12–15) as a controlled substance available for prescription. Examples of (1) include certain opiates and opiate derivatives (*e.g.*, heroin) and hallucinogenic substances (*e.g.*, marihuana, mescaline, peyote) and depressants (*e.g.*, methaqualone). Examples of (2) include opium, coca leaves, methadone, amphetamines and barbiturates.

While Congress did not specifically address the problems of drug and alcohol abuse in enacting section 504, the committees which considered the Rehabilitation Act of 1973 were made aware of HEW's long-standing practice of treating drug and alcohol abusers as eligible for rehabilitation services under the Vocational Rehabilitation Act. Further, Congress has expressed its concern regarding discrimination against drug and alcohol abusers by providing that a person may not be denied Federal civilian employment or a Federal license solely on the ground of prior drug abuse (Drug Abuse Office and Treatment Act of 1972, 21 U.S.C. 1101, 1180(c)(1) or prior alcohol abuse or alcoholism) (Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, 42 U.S.C. 4541, 4561(c)(1)). These nondiscrimination provisions cover the employment practices of all Federal law enforcement agencies with the exception of the national security agencies (*i.e.*, the Federal Bureau of Investigation, the Central Intelligence Agency and the National Security Agency, and positions designated as sensitive in other agencies for purposes of national security). Of course, section 504 covers present drug and alcohol use as well (*e.g.*, legal methadone maintenance). An individual who is otherwise qualified could not be excluded, for example, from a job in a program receiving Federal financial assistance solely because the applicant's current drug or alcohol use is allegedly a handicapping condition, unless it is shown that such drug and alcohol use impairs the applicant's ability to perform the job in question.

In section 122(a)(6) of the Rehabilitation Act Amendments of 1978, Congress specifically provided that, with respect to employment covered by section 504, the term handicapped individual "does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others." This amendment, in effect, made no substantive change in section 504 protections because persons whose current use of drugs and alcohol resulted in such behavioral characteristics would have been disqualified for employment even prior to the amendment. But the amendment does under-score the fact that this subpart does not require employers or program administrators to ignore drug and alcohol abuse in making determinations whether a handicapped individual is qualified for employment or other participation in a Federal assistance program. The subpart holds only that handicapped persons, as well as others, should be assessed on the basis of their behavior. A recipient employer may consider for all applicants, including drug and alcohol abusers, past personnel records, absenteeism, disruptive, abusive or dangerous behavior, violations of the law or work rules, or unsatisfactory work performance. Where such factors are absent, the fact that an individual once abused drugs or alcohol does not permit an employer to assume that a danger to safety would result in employing the person.

This subpart does not preclude a recipient employer from rejecting a handicapped applicant for legitimate reasons other than his or her handicap. For example, a recipient employer is not required to hire as a law enforcement officer a drug abuser who continues to violate laws prohibiting the use, possession or sale of drugs if the rejection is based on the violation of the law and not the handicap.

In the case of past drug abuse, each case must be judged on its own merits. With respect to employment, employers may weigh the following:

(1) patterns of use;
(2) kind of drug used;
(3) for each kind of drug used, the date started and the last date used;
(4) circumstances at the start of drug use;
(5) circumstances at the time of discontinuance of drug use;
(6) nature of treatment and prognosis;
(7) social behavior and attitude since discontinuance of drug use;
(8) history of previous rehabilitation efforts.

Many of these same factors would be relevant in assessing the employability of those with records of past alcohol abuse.

Some commentators expressed concern that the Department's discussion of drug and alcohol abuse which accompanies the Department's proposed rule suggested that, unlike other handicapping conditions, the Department would permit pre-employment inquiry into drug and alcohol abuse. That preception is erroneous. Section 42.513 of this subpart generally prohibits a recipient's pre-employment inquiry regarding an applicant's physical or mental handicaps. The same standard is applicable to a recipient's inquiry regarding an applicant's current or past drug or alcohol use or abuse. A recipient, of course, may condition an offer of employment on the results of a medical examination given to all applicants. Once a recipient makes such a conditional offer, inquiry regarding

Mr. **Edwards**. Why didn't the court reach a decision?

Ms. **Shane**. The court essentially used the *Grove City* analysis. They said funding was program specific, and therefore, we cannot reach the testing that this agency provides because the funding was not used for testing, but rather used for seminars which were, of course, of benefit to the membership of the Society.

Mr. **Edwards**. Thank you, Ms. Shane.

The gentleman from Illinois, Mr. Hayes.

Mr. **Hayes**. Just one question I would like to ask of Attorney Altman, I believe it is.

You are here representing the American Society of Clinical Pathologists, I believe.

Mr. **Altman**. We have been representing them on this case now for 8 years.

Mr. **Hayes**. In your testimony it says very clearly that you think rather than having H.R. 700, we must undo or overturn the Supreme Court decision, if we are to return what it was prior to that. The organization which you have represented for 8 years, were they supportive of the four past sets mentioned as having been affected adversely by the Supreme Court decision?

Mr. **Altman**. I am not sure I understood the four. Are they referring to the four facets——

Mr. **Hayes**. The thing that I am concerned about, prior to the Supreme Court decision, in 1973, I think, in chronological order, we had the Rehabilitation Act. In 1975, we had the Agency Discrimination Act. Prior to that you had title 6 and title 9.

Now, I am trying to find out if whether or not prior to the decision, if your organization which you represented for 8 years was supportive of these various facets of the Civil Rights Act.

Mr. **Altman**. I think the American Society of Clinical Pathologists has always been supportive of any ethical, moral, or humanitarian legislation.

I think in working out is own internal codes of ethics it looks to what law requires, then goes two steps farther.

As an organization, it does not accept Federal money and does not request or desire Federal or bureaucratic intervention in its programs. It is supportive of all facets of the civil rights specter and believes that if it ever had to go through the cost and expenses of proving its actions, that it would certainly satisfy those standards.

Mr. **Hayes**. I am not sure I follow you.

Mr. **Altman**. We support the standards. The reason——

Mr. **Hayes**. You don't support the act?

Mr. **Altman**. We don't support H.R. 700 because we have been litigating for 8 years on a particular issue. If the satute is retroactive, it will mean the organization will be forced to spend tens of thousands of dollars of more money defending its particular action.

In this particular case the woman had dyslexia and the organization had to decide whether to give her a certificate to work in a medical laboratory.

They asked us, their lawyers, if we put this woman in a hospital laboratory, she transposed a number, a medical treatment decision is made in error and the patient is adversely affected, if that patient sues the hospital and the hospital finds out we certified this woman when she couldn't read or couldn't read numbers, what is our exposure, and we said, you are probably liable.

Now, in discussion with her attorney we said we will be glad to certify you that you meet the educational requirements, that you have all of the knowledge base, but we just don't feel we can certify that you know how to read and analyze data because you admittedly can't. She says that is not acceptable. That is discrimination. And there we went into 8 years of litigation.

Mr. HAYES. Is the organization, you know, against discrimination, racial discrimination, discrimination against the handicapped, discrimination against the aged?

Mr. ALTMAN. Absolutely.

Mr. HAYES. All right.

You are for legislation for that? You support the legislation, your organization.

Mr. ALTMAN. I don't think I was of the age where I could support any in 1964. But I support the legislation.

Mr. HAYES. I am talking about this organization which has existed for 50 years, they supported these statutes.

Mr. ALTMAN. I don't know if they took a position on the legislation, but they certainly support the standards that are incorporated into the legislation.

Mr. HAYES. OK.

Mr. ALTMAN. I am not trying to be difficult.

Mr. HAYES. No; I am not saying you are trying to be difficult, but the track record has not been as good in some of these areas.

Mr. ALTMAN. I know there are different types of organizations. I think ours is a representative organization that is dedicated to health.

Mr. HAYES. It is just hard for me to understand if you were supportive of these different facts of discrimination which existed prior to the passage of the legislation why you would be against it, if we say the Supreme Court decision has weakened and suggested we are beginning to recede in our position on these kind of statutes, that you would say you are against H.R. 700, which is intended to put back into effect what already existed prior to the Supreme Court decision.

Mr. ALTMAN. I would only say the only reason I agreed to come up here today was to try and present a viewpoint on organizations that are subject as defendants to actions under these statutes.

And an organization like ASCP has very scarce resources which they are alloted to dedicate to their exempt purposes. And I think when you enact legislation, you need to look at the effect of that legislation on the litigation dockets and what it does.

I sort of speak from both sides of this because as a private lawyer, it would obviously be great if the entire world was ground to a halt as people sued each other. But I am not in favor of that in representing this particular organization. I have come up here to say that these are very worthy goals and worthy causes, but the legislation has to be very carefully drafted in order to avoid litigation because litigation does not serve anybody's purposes.

It does not do any good to reach a political compromise and have some words in a statute which everybody can agree to vote for but which is going to spawn decades of litigation. I don't think that that serves anybody's cause.

And some of the comments that I have made here on H.R. 700 are really on the ambiguities that are already built into the statute that are likely to spawn lots of litigation. That is why I think we are opposed to it.

I have also had no statement for the record whether it is going to be prospective only or whether it is retroactive. And the comment before on whether it goes to indirect benefits, I think you all have an opportunity to write into the legislative record very early that all you are doing is dealing with the program activity requirement, and you do not mean to change the law with respect to what constitutes Federal financial assistance, because I think if that goes into the record at some early point, a lot of other resistance which you will probably get for this legislation will disappear.

Mr. **HAYES**. You are certainly entitled to your views. We welcome, as a committee, as has been told to other witnesses, any suggestions.

Mr. **ALTMAN**. I think you all have an extremely difficult situation and I sympathize.

Mr. **EDWARDS**. George Crockett.

Mr. **CROCKETT**. Thank you, Mr. Chairman.

First of all, with respect to the testimony of each of the witnesses, I found it to be extremely helpful. But I am particularly intrigued, Mr. Altman, by your position.

Both of us are members of the legal profession. I think you would agree with me that it is pretty hard to find a single piece of legislation that does not contain ambiguities. And because of that, common sense tells us that we normally leave the resolution of those ambiguities to the judge who is presiding in the particular case.

When, however, the judge has come up with an interpretation that is contrary to the intent of the legislature, the legislature is expected to correct and make more certain what it had in mind. You agree with that, don't you?

Mr. **ALTMAN**. Absolutely.

Mr. **CROCKETT**. Now, let me see if you agree with something else. Fortunately or unfortunately, you are confronted with the subcommittee that contains three black members, each of whom speak from their own experience over the years with this whole question of trying to do something about discrimination.

And as a result when someone comes in and says, "I am opposed to discrimination, but * * *" immediately the antennas go up and we begin to ask ourselves, does that "but" really mean that the first part of what he said wasn't true?

Now you represent here the Clinical Pathologists. And I assume that now blacks and Hispanics and women and all other minorities are welcome into membership. Is that right?

Mr. **ALTMAN**. I would say that is certainly clear.

Mr. **CROCKETT**. Welcome to membership of this organization.

Mr. **ALTMAN**. Certainly.

Mr. **CROCKETT**. You don't discriminate as far as members are concerned?

Mr. **ALTMAN**. Absolutely not.

Mr. **Crockett**. Do you think the black pathologists and the women pathologists in your organization would subscribe to the views that you are presenting here now with respect to this legislation?

Mr. **Altman**. I would believe so. Each of those people had to pass certain educational requirements and take the examination.

And most people that go through that feel that people that don't meet the same requirements that they had to shouldn't be where they are.

Mr. **Crockett**. But isn't it your basic position that the Federal Government should do nothing whatever with respect to policing possible cases of discrimination in organizations such as your organization?

Mr. **Altman**. No; I don't believe I am saying that. I think the position is that an organization that doesn't receive Federal money should not be subjected to Federal regulations, particularly when that Federal regulation is a lesser standard than they uphold themselves and it causes them to waste their scarce resources in defending frivolous actions.

Mr. **Crockett**. But if I understand you correctly it should be Federal money that is received and used by the organization generally, and if it is a special program that the organization is carrying on, then the fact that that program is getting money and is subject to regulation should not require that the organization itself, which may be discriminating in all other respects, to be covered.

Mr. **Altman**. That perhaps would raise a problem with respect to an organization that was discriminating in all other respects. But you know, you gentlemen obviously have the power to enact whatever you want. All I am trying to suggest is that there are ethical organizations like ASCP out there that do not discriminate that would not be willing to give a program on alcohol abuse and not be willing to collaborate with the HHS to provide data on medical laboratories if it meant that they would have to subject themselves to endless litigation over whether their decisions are right or wrong.

I am just offering that for your consideration, as a point I am not sure anybody else has brought up. I think that was an exception acknowledged by the third circuit and one that would be written out by H.R. 700. If you enact H.R. 700 the way it is, ASCP would have to decide whether it wants to offer a program on alcohol abuse and be willing to spend $50,000, $100,000 again to defend itself against anyone who might sue it.

It is particularly vulnerable to actions like this because it deals with tens of thousands of people.

Mr. **Crockett**. But under this legislation, it has a choice; does it not? It can continue to follow a policy of discriminating but it cannot receive any Federal funds.

Mr. **Altman**. No; it cannot continue to follow a policy of discriminating because it is against its nature. It would rather disband than discriminate. Under this legislation it could decide whether or not it wants to sponsor a program in alcohol abuse and therefore subject itself to frivolous litigation. It can make that decision.

Mr. **Crockett**. Thank you, Mr. Chairman.

Mr. **Edwards**. Mr. Owens.

Mr. OWENS. I have no questions, Mr. Chairman.

Mr. EDWARDS. Ms. Shane, I wish you would direct your attention to the debate that we have, dialog that have had going with Mr. Altman. You must have some views about this particular lawsuit that has caused an entire institution—you represent 40,000 people you say?

Mr. ALTMAN. Includes about 45,000 active membership.

Mr. EDWARDS. That one lawsuit has been so troublesome that this organization that does not discriminate, wouldn't discriminate, is against a major civil rights bill.

Ms. SHANE. As long as there are individuals who feel there are—they have been victims of discrimination, there will be lawsuits through which those individuals will try to seek redress for that discrimination.

I think it is important to note that this private society is the gatekeeper for an entire profession. In other words, we are not talking about access to a limited, to a club or something of a limited nature. I don't know the facts of this case. I only know what appears in the legal literature.

But a woman who believed she was qualified for a profession was unable to enter that profession, and she claims, based on discrimination. I would like the court to be able to reach that decision and find whether this woman was a victim of discrimination.

Mr. EDWARDS. Well, there must have been, I think, Mr. Altman describes the case as frivolous. You used the word, whether it refers to this case or not. But apparently you don't think this case had much to it. I should think any case that takes 8 years in court could not necessarily be described as frivolous. Judges have some discretion.

Ms. SHANE. Speaking from my general experience as opposed to this specific case, again because I am only aware of the decision that was handed down, that certainly would be true. I also think, backing up slightly, the overwhelming majority of implementation of the civil rights laws does not occur in the courts. It occurs because the recipients voluntarily bring themselves into compliance with the laws.

At the second stage it occurs because the Federal agencies enforce the laws. And only as a last resort and in a minority of the cases do plaintiffs end up in court litigating issues of violations of civil rights. And so that I am sure that we can point to cases in every area of the law where a defendant was subject to litigation which the defendant does not believe they should have been subject to.

It is hard to tell on the face of this. Your point is well taken, after 8 years of litigation, the court hardly considered it frivolous. It is also difficult to tell whether the woman had a valid claim or not. Again, this is the minority cases we are talking about in that respect.

Mr. EDWARDS. Also, Mr. Altman, your organization is subject to civil rights laws in employment discrimination matters. Have you been overwhelmed with lawsuits so that you would like not to be covered there?

Mr. ALTMAN. I don't believe so.

Mr. EDWARDS. I can't quite understand why you pick this particular law and can only come up with one troublesome lawsuit. That is a thin reed to put a great organization like you represent on the line along with many people who don't like civil rights laws at all.

Mr. ALTMAN. It does certainly create a problem of image, to put us in bed with organizations probably within our country that do discriminate. I know our particular organization, because it represents not only pathologists who are physicians, but also medical technologists, who are basically people who work in the laboratory, they have a great number of women and minorities who are involved in that particular profession.

I am also struck when I go to Chicago, for example, when I go to their headquarters, there aren't very many men around. I have made that comment before to them. I think if the legislation as you all had introduced it had indicated that it would be prospective only in effect, if it didn't include that ambiguous, any other entity determined in accordance with other principles, I am not sure whether I would be here today. I am not sure if it comes out of this subcommittee, if it indicates it is prospective only, I am not sure I would be heard from again. I am sure I would be silent.

Mr. EDWARDS. I am sure we will take a hard look at that. We don't necessarily consider everything we write as biblical.

Mr. Kiko.

Mr. KIKO. Thank you.

Mr. Altman, I have a question. It seems like all the questions are directed to you.

H.R. 700 states that legislative action is necessary to restore prior consistent and long-standing executive branch interpretation in broad institutionwide application of the law. That is in the introduction.

In your testimony, you state that the merits of her dispute of never been reached however because the Department of Health, Education and Welfare and then the courts held that the ASCP's testimony, certification and testing program, did not constitute a program or activity.

Could you just expound on that particular point of your testimony?

Mr. ALTMAN. I guess that goes back to the point that I had addressed earlier, which is that I really don't think that *Grove City College* was the seminal decision that changed law in areas, it was predated by the *North Haven Board of Education* v. *Bell* and maybe five of six district court opinions.

I also have not done an exhaustive analysis of all the agency regulations in a year or two. But it seems to me that the Department of Health, Education and Welfare at least with respect to the Age Discrimination Act of 1973, excuse me, Rehabilitation Act of 1973, had responsiblity for promulgating Governmentwide regulations to implement that act which power was superseded by the authority of the Justice Department in 1980.

Our review of the HEW regulations at that time back in 1977 and 1978 was that it did not cover ASCP. That it did not enforce an institutionwide coverage that was more of—at that point adopted program specific requirements.

Therefore I disagree somewhat with this statement of the findings of Congress in this preamble. I don't think that *Grove City College* is the only decision that changed the law in this area.

I think it was reflective of prior court decisions and some agency interpretations of the statutes. Like I said before, I think that this legislation would also go farther than just reversing that line of cases.

It would exclude some of the exceptions that existed prior to *Grove City College*. That is basically what I meant in my testimony.

Mr. EDWARDS. If there are no further questions, we thank the panel.

You have all been very helpful. The subcommittee must leave now. We thank the panel and witnesses from Philadelphia, New York and Delaware. We have had both sides presented and that is very healthy too. We thank the adversaries as well as the proponents.

[Whereupon, at 3 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. BOB EDGAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, first of all I would like to thank you for affording me this opportunity today to speak in support of the Civil Rights Restoration Act of 1985. I would like to commend you and the other members of the Subcommittee on Civil Rights and also the Education and Labor Committee for holding these field hearings in Philadelphia. Your leadership in this field is, as usual, exemplary and I am sure will go a long way towards ensuring passage of this important legislation.

Despite the considerable efforts we mounted in the House last year in securing passage in the House and sending to the Senate a similar piece of legislation, the Senate failed to pass this bill in the waning days of the 99th Congress. Hence, we are here again, ready to redouble our efforts in gaining final approval of legislation to address the *Grove City* ruling.

As you know, in February of 1984, the Supreme Court narrowed the application of Title IX of the 1972 Education Amendments in the *Grove City* v. *Bell* case. The Supreme Court held that an institution need only comply with anti-discrimination regulations in the 'program or activity' that directly received the financial aid. As a result, educational institutions will no longer be forced, as Congress clearly intended, to maintain equal rights for women, the highicapped and minorities throughout all school programs if any of their programs is federally funded.

As Congress realized in 1972, and as has been the position historically of the Congress since it enacted the Civil Rights Act of 1964, equal rights for women, the handicapped, and minorities cannot be ensured without adequate enforcement powers. Indeed, as the record consistently shows, Congress has intended the withholding of federal funds, even from an entire institution, to be the chief vehicle for the enforcement of civil rights laws. To take away this instrument undermines the protections themselves and violates the clearly expressed wishes of Congress.

This legislation not only seeks to clarify the application of Title IX of the Education Amendments of 1972, but also of section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title VI of the Civil Rights Act of 1964. Without corrective legislation, the Supreme Court ruling threatens both girls and women whose legal rights are protected under Title IX. Because other protective federal statutes are worded, in language similar to Title IX, the rights of minorities, senior citizens, and the handicapped are also endangered by extension.

Our great fear is, of course, that once Title IX, the monumental civil rights legislation passed in 1972 to bolster the enforcement of women's rights, is narrowly interpreted by the Supreme Court, a precedent is set for the less stringent application of other civil rights laws. We simply cannot allow this to happen. Progress in the field of civil rights is slow and often painful. Now is not the time to erode the progress that we have made.

As Americans, we must unite to forbid the use of tax dollars to subsidize discrimination against women, against minorities, against the handicapped, and against the elderly. Let no one doubt that this Congress has a commitment to equal protection for all of our people under the law. Let us send a clear and precise signal of our resolve by speedy passage of the Civil Rights Restoration Act of 1985 early in this Congress.

Mr. Chairman, thank you again for allowing me this chance to testify and I look forward to working with you and our colleagues toward passage of the Civil Rights Restoration Act as soon as possible.

CIVIL RIGHTS RESTORATION ACT OF 1985

THURSDAY, MARCH 7, 1985

House of Representatives, Committee on Education and Labor, Subcommittee on Civil and Constitutional Rights, Committee on Judiciary,
Washington, DC.

The committee and subcommittee met, pursuant to call, at 9:30 a.m., in room 2175, Rayburn House Office Building, Hon. Augustus F. Hawkins (chairman of the full committee) presiding.

Members present for Education and Labor: Representatives Hawkins, Murphy, Kildee, Martinez, Owens, Hayes, Perkins, Bruce, Solarz, Dymally, Penny, Jeffords, Gunderson, Bartlett, McKernan, Armey, Fawell, and Henry.

Staff present: Electra Beahler, minority counsel for education, Education and Labor Committee; Edmund Cooke, counsel; Karen Vagley, associate counsel; Patricia Morrissey, senior legislative associate.

Members present for the Committee on the Judiciary: Representatives Don Edwards, Conyers, Schroeder, Sensenbrenner, DeWine, and Dannemeyer.

Staff present: Ivy L. Davis, assistant counsel; Phil Kiko, associate counsel.

Mr. **Edwards**. This morning, again, is a joint hearing with the Education and Labor Committee, and the House Judiciary Committee, in particular the Subcommittee on Civil and Constitutional Rights. The subject is H.R. 700, the Civil Rights Restoration Act of 1985.

I am going to have to leave after a few minutes, because a Judiciary Committee meeting requires my presence. So, I apologize in advance, but the gavel will be handed over to my colleague from California, the chairman of the House Education and Labor Committee.

I am especially honored this morning to introduce the first witness, Mr. Ham Fish, the ranking minority member of the Committee on the Judiciary. His distinguished career in public service is evidenced by one dominating principle, a deep commitment to the constitutionally based principle of equal justice under law for all. His commitment has remained steadfast, even though sometimes it is fashionable and even politically safe to do otherwise.

Mr. Fish was the great hero of a number of civil rights bills, in particular the Voting Rights Act extension of a year or so ago, where he manfully led the fight for its enactment.

Throughout his congressional career the distinguished gentleman from New York has been a leader of his party in the House on every civil rights measure brought before this body.

It is my pleasure to welcome the ranking minority member of the Committee on the Judiciary, Hon. Hamilton Fish, Jr.

Mr. Fish, you may proceed in a moment.

The gentleman from Wisconsin, Mr. Sensenbrenner, the ranking Republican on the Subcommittee on Civil and Constitutional Rights is recognized.

Mr. SENSENBRENNER. Mr. Chairman, I have not yet made up my mind whether I will support H.R. 700. While I was a cosponsor of H.R. 5490, the Civil Rights Act of 1984, I feel there was a problem with truth in advertising as to what proponents said was in the bill and what was actually included.

As we know, H.R. 5490 was filibustered to death in the Senate. You should also know that I was originally asked by the administration to introduce a companion bill, the Senate bill 272, which was introduced in the Senate by Robert Dole of Kansas. However, I declined that request.

As the next seven hearings unfold, I will be asking questions on how this bill applies to the business community, private and parochial schools, and state and local governments.

Initially, I am concerned about the unequal treatment and the coverage between State and local governments, and businesses, partnerships and other entities. I am unclear as to how H.R. 700 covers private and parochial schools. I am unsure as to whether H.R. 700 does truly restore the law to what it was prior to the *Grove City College* v. *Bell* Decision, or whether it goes beyond that.

The pinpoint language also concerns me. The breadth and meaning of the catchall phrase in the definition of program or activity also needs to be closely examined.

I am hopeful that these questions will be answered, and if not, that the Subcommittee on Civil and Constitutional Rights, the full Judiciary Committee, and the full House of Representatives, as well, will be receptive to clarifying amendments. If not, I am afraid that H.R. 700 will suffer the same fate as its predecessor, H.R. 5490.

Thank you.

The CHAIRMAN. Thank you, Mr. Sensenbrenner.

Mr. CONYERS. Mr. Chairman.

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Yes, thank you, Mr. Chairman.

I would just like to welcome my colleague from Judiciary, and indicate that over the past two decades Federal civil rights have protected citizens from various forms of discrimination, especially in education, health care, voting, and social services.

Title VI of the Civil Rights Act of 1964, and title IX of the Educational Amendments of 1972, all express a very fundamental moral sense that in this Nation discrimination in programs receiving Federal assistance will not be tolerated, because simple justice requires that public funds, to which all Americans contribute, not be spent in any fashion which encourages, or entrenches, or subsidizes discrimination.

Despite the protection that these laws afford, much work remains to be done in achieving equal opportunity for all Americans. In fact, I think we may be slipping backward.

The Supreme Court has added to our difficulty by misinterpreting congressional intent in the case of *Grove City College*, by ruling that the antidiscrimination provisions of title IX of the Education Amendment of 1972 apply only to specific programs or activities within an institution receiving direct Federal aid.

So, the court has created a major loophole in title IX, and the other mentioned civil rights statutes which would encourage discrimination.

The other problem with *Grove City* is that it gives to those not committed to the effective enforcement of civil rights an opening, and this danger has been demonstrated more than once.

So, I believe these hearings are critical. There is nothing to be gained by reviewing the fact that this did come out of the House of Representatives, and unfortunately, in the closing hours of the other body was not put on the calendar.

I am hoping this time we can go all the way, and I applaud both committee chairmen for their constructive effort in getting it on so early.

The CHAIRMAN. Thank you, Mr. Conyers.

Unfortunately, the agenda has been somewhat twisted. We did have a prepared agenda for this morning, but we seem to have deviated from it. I apologize to Mr. Fish, who was presumably introduced to make a statement.

For that reason, the Chair will ask that his statement be printed in the record at this time, so as not to delay the other witnesses before the committee, and then we will proceed with the prepared agenda for the day, recognizing first of all, the scheduled witness, The Honorable Hamilton Fish, Member of Congress, from New York.

Mr. Fish, we are delighted to have you as the opening witness this morning. You may proceed.

STATEMENT OF HON. HAMILTON FISH, JR., MEMBER OF CONGRESS, NEW YORK

Mr. FISH. Thank you very much, Mr. Chairman. I, too, ask that my statement in its entirety——

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Hamilton Fish, Jr., follows:]

PREPARED STATEMENT OF HAMILTON FISH, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, as an original co-sponsor of the Civil Rights Restoration Act of 1985 (H.R. 700), I am very pleased and proud to be here today. As you know, I strongly support legislative action to return four pivotal civil rights laws to their rightful status prior to two Supreme Court decisions which occurred on February 28, 1984. These decisions are: *Grove City College, et al.* v. *Bell, Secretary of Education*, 104 S.Ct. 1211 (1984), and *Consolidated Rail Corporation* v. *Darrone*, 104 S.Ct. 1248 (1984).

The Civil Rights Restoration Act is intended to re-establish the fundamental principle that when *any* part of an organizational entity receives Federal financial assistance, then all of the operations of that entity are subject to the anti-discrimination requirements contained in four civil rights statutes. The four laws to which I refer are: (1) Title IX of the Education Amendments of 1972; (2) Title VI of the Civil

Rights Act of 1964; (3) the Rehabilitation Act of 1973; and (4) the Age Discrimination Act.

Each of these laws prohibits discrimination in any "program or activity receiving Federal financial assistance". Title IX prohibits discrimination based upon sex. Title VI prohibits discrimination based upon race, color, or national origin. The Rehabilitation Act prohibits discrimination against the handicapped. The Age Discrimination Act prohibits discrimination based upon an individual's age.

So, if you choose to receive Federal financial aid, you must comply with the antidiscrimination requirements of all four of these laws. This seems to me to be a logical and fair result. The Federal Government is not in the business of subsidizing discrimination. If you choose to discriminate or ignore discriminatory activities within the realm of your organization control, then you will not be aided and abetted in doing so, through the use of taxpayer monies.

Allow me to briefly review the problems presented by the Supreme Court decisions in *Grove City* and *Darrone*, and to explain further why I believe this legislation is necessary.

Grove City College, a private co-educational liberal arts college, refused to sign the "Assurance of Compliance" certification under Title IX. Grove City College asserted that it received no Federal financial assistance—i.e., that it was not a "recipient" under Title IX and, consequently, was not subject to the discrimination prohibitions of that statute. The facts in the case were that no direct Federal assistance went to the College; but that some of the students attending Grove City College received Federal Basic Educational Opportunity Grants (BEOGs).

The Supreme Court held, first, that Grove City was a "recipient" under Title IX, because "receiving Federal financial assistance" includes Federal aid to a student who uses the funds at a particular institution. But, the Supreme Court went on to construe "program or activity" as not meaning the operations of the entire college, but only (in this instance) the student financial aid office (i.e., where the BEOG money, in fact, ultimately went). On virtually the same day, in the *Darrone* case, the Supreme Court also gave the same restrictive interpretation to "program or activity" in Section 504 of the Rehabilitation Act of 1973.

Immediately, there was a negative and critical reaction to the narrow interpretation given to "program or activity" in both of these decisions. In an education context, the Supreme Court interpretation meant, for example, that if sex discrimination occurred in the French department of a college but no Federal funds went to that particular department, then the college could continue to receive Federal assistance despite this discrimination. Importantly, since the phrase "program or activity" is also present in Title VI and the Age Discrimination Act, that same program-specific construction could be applied in cases under those laws.

Particularly instructive on this point is the fact that, since the *Grove City* and *Darrone* decisions, the Department of Education has not only halted work on over sixty pending Title IX cases, but also on cases under Title VI, Section 504, and the Age Discrimination Act.

In the 98th Congress, legislation was introduced both in the Senate and in the House of Representatives to respond to the *Grove City* problem. These bills were intended to restore the four relevant laws to their status prior to the *Grove City* decision. The House bill (H.R. 5490) was favorably reported by both the Education and Labor Committee and the Judiciary Committee. This legislation passed the House of Representatives on June 26, 1984 by a vote of 375-32. However, disagreement over the intended and actual scope of the legislation resulted in a failure by the Senate to enact similar legislation.

Last year's bill ran into difficulty principally because it contained a broad and arguably ambiguous definition of "recipient". The bill's definition differed in certain respects from the existing regulatory definitions of recipient for each of the four laws. Concern was expressed that this legislation was, in fact, being used to expand the coverage of these four laws to entirely new categories or classes of recipients.

H.R. 700 reflects a sincere attempt to respond to these criticisms. This year's legislation does not alter or redefine recipient. The existing regulatory definitions of recipient are unchanged and, importantly, the exclusions for "ultimate beneficiaries" which are contained in three out of four regulatory definitions would be retained. So, for example, entities or persons such as farmers, which are not recipients under the law now, because they are "ultimate beneficiaries", would not have their status changed.

Instead, this year's proposal defines the phrase "program or activity" and attempts to bring that definition in line with Federal enforcement policy as it existed prior to *Grove City* and *Darrone*. This makes eminently good sense in that it was the

Supreme Court's restrictive interpretation of that phrase which prompted a legislative reaction. Such a structural approach is both legally and legislatively logical.

Under H.R. 700, entity-wide coverage under the four antidiscrimination laws would extend to: (1) departments or agencies of a State or a local government; (2) universities or systems of higher education; (3) local education agencies or other elementary or secondary systems; (4) corporations, partnerships, or other private or non-profit organzations; and (5) other entities which receive Federal financial assistance. In the case of this last category ("other entity"), the scope of coverage presumably would be based upon whether or not the entity is analogous in structure and organizational relationships to the prior categories specified in the list. This last category, for example, would include colleges and special-purpose governmental units established under State law, such as a water district or an areawide planning district.

H.R. 700 also would make the "pinpointing doctrine" statutory for the first time. *See: Taylor* v. *Finch*, 414 F.2d 1068 (1969). That doctrine holds that once a "program or activity" is receiving Federal financial assistance, and discrimination is found to exist, then only those funds which actually support the discrimination would be cut off. So, for example, if a municipal housing authority is found to be discriminating on the basis of race, or sex, or age, or handicap, only housing monies are potentially terminated but not transportation monies or education monies, etc. While as a practical matter fund termination is a negotiation tool and used only as a last resort, the intent of this legislation is to limit potential fund termination to those funds which actually have a specific nexus to the discrimination that is found.

The other legislative alternative currently being considered is S. 272, introduced by Senator Dole and others. It would amendment the four laws in question only with respect to educational institutions. On its face, this seems to be a logical approach since *Grove City* was a Title IX education case. But this approach does not address the legal fact that the Supreme Court's narrow interpretation of "program or activity" impacts on all four laws. Other Federal aid recipients (such as States, localities, public and private organizations) and the non-education activities of colleges and universities would continue to be judged under the narrow holding of those two cases. Such legislation does not restore prior enforcement coverage under all four of these laws.

Any legislation dealing with the issues raised in *Grove City* and *Darrone* (and all four of the laws impacted by those decisions), has broad implications that require careful, precise legislative language and precise legislative history. H.R. 700, which is endorsed by the Leadership Conference on Civil Rights, reflects an attempt to encourage Congress to carefully evaluate the results and ramifications of the *Grove City* and *Darrone* decisions.

As with any legislation of this importance, I would expect fundamental policy questions to be raised and resolved. That is our responsibility as legislators. Whether the categories listed in H.R. 700 should receive entity-wide coverage, will become the focus of this year's debate. Whether a particular entity should be covered in its entirety, when one portion of that entity receives Federal financial assistance, is ultimately a policy choice that Congress will have to make in each case. But it is a policy choice that should not and cannot ignore the original rationale that prompted the enactment of these four statutes. They were intended as deterrents to institutional discrimination and that fact ought not be overlooked or obscured in this debate. Ultimately, the question for Congress to answer is whether or not we want these laws to be enforced in a comprehensive and effective manner.

Again, I appreciate this opportunity to testify and look forward to working with you on fashioning legislation that clearly and precisely returns these four major civil rights statutes to their former status. No legislation is immune from amendment, but I would hope we all share the goal of assuring that Federal monies should not be going to institutions or entities that sanction or permit discriminatory policies.

I would be happy to try and answer any questions you may have, and I thank you for your time.

Mr. FISH. Mr. Chairman, as an original cosponsor of the Civil Rights Restoration Act of 1985, I am delighted to be with you today. And particularly, I would like to express my gratitude to Mr. Edwards, for his very generous introduction a few moments ago.

As you know, I strongly support legislative action to return four pivotal civil rights laws to their rightful status, prior to two Supreme Court decisions on February 28, 1984, *Grove City College* and *Darrone.*

The Civil Rights Restoration Act is intended to reestablish the fundamental principle that when any part of an organizational entity receives Federal financial assistance, then all of the operations of that entity are subject to the antidiscrimination requirements contained in four civil rights statutes. Each of these laws prohibit discrimination "in any program or activity receiving Federal financial assistance."

So, if you choose to receive Federal financial aid, you must comply with the antidiscrimination requirements of all four of these laws. This seems to me to be a fair and logical result. The Federal Government is not in the business of subsidizing discrimination.

If one chooses to discriminate, or ignore discriminatory activities within the realm of the organization and organizational control, then he or she should not be aided and abetted in doing so through the use of taxpayers' moneys.

Mr. Chairman, the problem as the subcommittee well knows, was brought up when the Supreme Court construed program or activity as not meaning the operations of the entire college in the *Grove City* case, but only in that instance the student financial aid office.

On virtually the same day, the *Darrone* case was decided and the Supreme Court gave the same restrictive interpretation to program or activity in section 504 of the Rehabilitation Act of 1973.

In an educational context, the Supreme Court interpretation meant that if sex discrimination occurred say, in the French department of a college, but that no Federal funds went to that particular department, then the college could continue to receive Federal financial assistance, despite discrimination.

Importantly, since the phrase "program or activity" is also present in title VI and the 1964 Civil Rights Act, that same program-specific interpretation could be applied in cases under those laws.

I think particularly instructive on this point is the fact that since *Grove City* and *Darrone,* the Department of Education has not only halted work on over 60 pending title IX cases, but also, on cases under title VI, section 504, and the Age Discrimination Act.

Last year's bill, Mr. Chairman, ran into difficulty, principally because it contained a broad and arguably ambiguous definition of recipient. The bill's definition differed in certain respects from the existing regulatory definitions of recipient for each of the four laws. Concern was expressed that this legislation was, in fact, being used to expand the coverage of these four laws, to entirely new categories or classes of recipients.

H.R. 700 reflects a sincere attempt to respond to these criticisms. This year's legislation does not alter or redefine recipient. The existing regulatory definitions of recipient are unchanged, and importantly, the exclusions for ultimate beneficiaries which are contained in three out of four regulatory definitions would be retained also.

Instead, this year's proposal defines the phrase "program or activity" and attempts to bring that definition in line with Federal enforcement policy, as it existed prior to *Grove City* and *Darrone.*

This, to me, makes eminently good sense, in that it was the Supreme Court's restrictive interpretation of that phrase which prompted a legislative reaction. Such a structural approach is both legally and legislatively logical.

Under H.R. 700, entity-wide coverage under the four antidiscrimination laws would be extended to: One, departments or agencies of a State or local government; two, universities or systems of higher education; three, local education agencies or other elementary or secondary systems; four, corporations, partnerships or other private nonprofit organizations; and five, other entities which receive Federal financial assistance.

In the case of the last category, other entity, the scope of coverage, presumably, would be based on whether or not the entity is analogous in structure and organizational relationships to the prior categories specified in the list.

Now, this last category, for example, would include, in my judgment, colleges and special purpose governmental units established under State law, such as the water district, or an areawide planning district.

Mr. Chairman, the other legislative alternative currently being considered in response to *Grove City* and *Darrone* is Senate bill 272, introduced by Senator Dole, and others. It would amend the four laws in question, only with respect to educational institutions. On its face this would appear to be a logical approach, since *Grove City* was a title IX education case. But I submit, that this approach does not address the legal fact that the Supreme Court's narrow interpretation of program or activity impacts on all four laws.

Other Federal aid recipients, such as States, localities, public and private organizations, and the noneducation activities of colleges and universities, would continue under that approach to be judged under the narrow holding of those two cases. Such legislation does not restore prior enforcement coverage under all four of these laws.

As with any legislation of this importance, I would expect fundamental policy questions to be raised and resolved. That is our responsibility as legislators. Whether the categories listed in H.R. 700 should receive entity-wide coverage, or become the focus of this year's debate, whether a particular entity should be covered in its entirety, when one portion of that entity receives Federal financial assistance is ultimately a policy choice that Congress will have to make in each case.

But it is a policy choice that should not, and cannot ignore the original rationale that prompts the enactment, or prompted the enactment of the four civil rights statutes. They were intended as deterrents to institutional discrimination, and that fact cannot be overlooked.

Again, Mr. Chairman, I appreciate this opportunity to testify, and look forward to working with you, and both of the committees in fashioning legislation that clearly and precisely returns these four major civil rights statutes to their former status.

No legislation is immune from amendment, but I know we all share the goal of assuring that Federal moneys should not be going to institutions or entities that sanction or permit discriminatory policies.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Fish.

Mr. Fish, you have had many years of experience in this area of the law. May I ask you whether or not it is your view that the Congress originally intended that the four laws which you mentioned should have broad institutional-wide coverage?

Mr. FISH. I have no doubt about it. My service extends over the history of three of these laws, and I recall that it was just a few years ago that the Congress reaffirmed this intent by an overwhelming majority.

The CHAIRMAN. Would it also be your view that the remedy provision provided in the new proposal, H.R. 700, is basically, only a conforming amendment, and it does not go beyond that idea?

Mr. FISH. I think the thrust of this is restorative, it is the Restoration Act, properly so termed. I am very comfortable that the language dealing with educational institutions and with State and local government departments reflect not only the case law, but Federal enforcement policies, over the years. It is entirely consistent with the law prior to *Grove City.*

I should also add that I think there are—obviously this is the job of the two committees dealing with this legislation—areas that I think the committees should focus on in the bill. What is the intent with respect to, say, corporations? Is it clear what is meant by terms like "other school systems"? These terms, I think, need defining and refining.

The CHAIRMAN. Thank you.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

I, too, would like to welcome our ranking minority member of the Judiciary Committee, Mr. Fish, to this hearing today.

I think that there is nearly unanimous agreement in the Congress that it is our obligation to craft a bill that restores the law to what we thought it was, prior to the *Grove City* decision.

The dispute is more what language should be used to implement that, because I don't think we wish to create new regulations, new enforcement activity, and further extend the long arm of Uncle Sam into more and more areas.

In my opening statement, I expressed two concerns that I would like to ask you to respond to, Mr. Fish. The first concern is why the coverage of this act is considerably narrower as it applies to State and local governments, than it applies to the private sector?

Could you enlighten us as to why that decision was made?

Mr. FISH. No, sir, I can't enlighten you as to why the decision was made. In my response to the chairman's question a moment ago, I alluded to this, because it seems to me to be fairly clear that if you are talking about funds going to the mayor's office, or the Governor's office, then you would trace the funds to the departments to which the mayor or the Governor has transferred them.

But then we do have, as you say, another entity known as the corporation, partnership, or other private organization that is not so defined. And I think this is one of the areas that the committees should focus on, as to whether or not it is intended, for example, that a very large corporation might receive Federal funding for a job retraining program in one plant, out of, say, 50 plants. And do we intend thereby to trigger the entire operation of the corporation.

I think that is a very legitimate focus of your inquiry here. And I compare it to the system of higher education, where you might ask aren't the Berkeley and Davis campuses totally separate. Well, it is my understanding that the Board of Regents of California, does exercise effective policy control over the entire university system. So, I think that would differentiate those two cases.

Mr. SENSENBRENNER. The second question that I would like to ask is in the *Grove City* case, the lower court determined that a college that took guaranteed student loan students, but did not accept any other Federal funds was not a recipient. And that part of the lower court decision was not appealed, and consequently, the Supreme Court did not decide that question.

One of the reasons that the Civil Rights Act of 1984 was defeated in the Senate, in my opinion, was the opposition of many private colleges and universities that wanted to take guaranteed student loan students, but did not wish to be brought in under the provisions of this bill, really not knowing where they stood. And, consequently, they opposed it.

Now, is it the intentions of the authors of this bill that guaranteed student loan students would make a private college or university that did not accept Federal funds, brought in under the coverage of this act?

Mr. FISH. It is my understanding, Mr. Sensenbrenner, the Supreme Court in *Grove City* made the finding that the college was, indeed, the recipient, which was one of the issues before the Court.

This year's bill, as distinct from last year's bill, as you know, addresses, and I think appropriately, the term "program or activity," and leaves the recipient language alone. I think that was part of the problem with last year's measure.

But clearly, to me, those universities would be covered in their entirety, if their students received Federal financial assistance.

Mr. SENSENBRENNER. That includes guaranteed student loans and the GI bill?

Mr. FISH. I would think so; yes.

Mr. SENSENBRENNER. Thank you.

The CHAIRMAN. Thank you.

The Chair understands that both committees have a 5-minute rule and in order to expedite the hearing, and to allow all of the members an opportunity to ask questions we will try to adhere, if that is acceptable to the members, to the 5-minute rule. And if necessary, we will then get back to one of the previous members.

Mr. Conyers, do you care to ask a question of the witness?

Mr. CONYERS. Yes, thank you, Mr. Chairman.

I am very pleased to see that our ranking minority leader is again cosponsoring this legislation.

And it seems to me the pinpointing provision is a new addition to this from the bill that was introduced in the earlier session. Do you have any views on how it changes the present law, Mr. Fish, or the earlier bill that we were working on last time?

Mr. FISH. It is my understanding, Mr. Conyers, that there will be no change in the pinpointing provision that—if this bill passes, it will make it statutory for the first time, the language on pinpointing in H.R. 700, is identical to what was in the bill last year.

Mr. CONYERS. And there isn't any question in our mind that this Supreme Court misinterpretation of congressional intent is what has brought us here, both last session and this session.

Is that your view, too?

Mr. FISH. That is my view, yes, sir.

Mr. CONYERS. Are there any major differences then between the bill that we introduced at the earlier session, and the one that is now being brought forward?

Mr. FISH. It is my understanding that the major difference in approach, the last year's bill redefined recipient, whereas this year's bill clarifies the congressional intent with respect to program or activity, defining it carefully to conform with the Federal enforcement policies, and case law over the last 20 years.

So, I think this is more directly and appropriately addressing the issue that the Supreme Court addressed. And we should, hopefully, avoid some of the criticism of last year's bill. That is whether or not we went beyond being simply a restorative act.

Mr. CONYERS. Well, I think that this redesigning, as it were, is intended to eliminate some of the misunderstanding that occurred in the House, even though the measure was successful. And I thank you for your contribution, and yield back the balance of my time.

The CHAIRMAN. Thank you.

The Chair would like at this time to yield to the ranking minority member of the House Education and Labor Committee, and a cosponsor of the bill. If he cares to extend his questioning so as to make a statement, as the ranking minority member, he certainly has that privilege. Mr. Jeffords.

Mr. JEFFORDS. Thank you, Mr. Chairman. I appreciate your courtesy.

I would like to make my statement a part of the record. I will defer reading it, if that is all right.

The CHAIRMAN. Without objection, so ordered.

Mr. JEFFORDS. And I would like to commend Mr. Fish for the tremendous leadership that he has shown in this area, a very difficult and critical area. And I certainly have been following his lead, and have done it without any trepidation at all.

Thank you very much.

Mr. FISH. Thank you, sir.

The CHAIRMAN. Mrs. Schroeder.

Mrs. SCHROEDER. Thank you, Mr. Chairman.

I just want to compliment both gentlemen for this. Obviously, I am a wholehearted supporter of the bill, and I appreciate your being here, and working so hard to cast it in a light that, hopefully, it won't have the problems that it had the last time, and help us get it through the Senate this time.

Thank you.

The CHAIRMAN. Thank you.

Mr. Fawell, the Chair is calling on the members in the order in which they arrived at the committee this morning.

Mr. FAWELL, I have no questions.

The CHAIRMAN. Thank you.

Mr. Hayes.

Mr. **Hayes**. No questions or comments, as a late arrival.

The **Chairman**. Mr. Bartlett.

Mr. **Bartlett**. Thank you, Mr. Chairman.

Mr. Fish, I, like the others, commend you and Mr. Mineta for your leadership. As you know, I supported the legislation last year, as you did, although I, had along with many of my colleagues reservations about some of the implications in the legislation.

I do think that you have come back with a much better bill this year, and that is the text of what you said, in that it seems to be more specific and says much more closely precisely what we mean. I also want to say how much I appreciate, as a member of the Education and Labor Committee, the extensive hearings that the chairman has prepared for us, now having extensive hearings on this bill, so we can begin to examine some of the excess.

And I, likewise, believe that the administration has come a long way, and has made some major progress on the bill, as we, hopefully, will come up with a product that everyone will be happy with.

I have a few questions, Mr. Fish, as far as both the process and the substance of the bill are concerned. No. 1, as you know, in the last session there was what had informally become known as a no amendment rule. It wasn't a written rule of the committee, or the Congress, but it was generally well known that—and I may be overstating the case—that no amendments were going to be accepted. With one exception, this was rather strenuously adhered to by the committees and by the House.

I wonder if you perceive that that same unwritten no amendment procedure will be in place, or whether you are comfortable with considering ways to improve the legislation as it goes through the process?

Mr. **Fish**. Well, I am very comfortable in considering ways of improving this. In response to an earlier question, I did indicate some areas I thought that the committee should look at very carefully and refine, or define.

And if there is such an understanding of a no amendment posture, it has not come to my attention and I am not a party to it.

Mr. **Bartlett**. Thank you.

On some of the specifics of the bill, at one point the words are used a university, or a system of higher education. I wonder if you believe that that causes any sorts of problems, in terms of broadening out—using the word "system," broadening out the definition more than we intended?

And I hesitate to even bring it up, because it may be a distinction without a difference, that is a system of higher education, such as the University of California system, or; the University of Texas system, each of the components, no doubt, would be covered because they each accept Federal aid in some form or another. But I do wonder as to whether we really intend that if one campus, for example, or one department of one campus accepts federal aid, then that automatically triggers coverage for the entire system, even though they may be autonomous, or semiautonomous units?

Mr. **Fish**. I think this calls for a control analysis. Where the system does respond to one policy group, and I gave the illustration of the University of California, where the board of regents may exercise control, entity-wide coverage would result. And in that case, I think that you could safely say that while the various campuses, like I illustrated, Berkeley and Davis, are separate, nevertheless they are under the policy control of one governing board.

This is clearly an area that has to be further defined, whether it be in a committee report, or by language in the bill, so that it is very clear what is intended.

Mr. BARTLETT. So you would, in essence, set the definition dependent on the concept of "control," that is to say who controls that unit?

Mr. FISH. Oh, yes. I think that is the purpose, or the reason for this.

Mr. BARTLETT. The next section refers to a corporation, partnership, or other private organization. As you know, there are two questions that come to mind, One is in the case of corporation that is rather extensive, let's say General Motors, does this then—I have some concerns that this language where it extends to the entire corporation, would, in effect, have the effect of causing various large corporations from prohibiting any of their plants, anywhere, from participating in, for example, job training partnership acts, because it would trigger coverage of the entire corporation.

Having said that, corporations in this country are already covered by civil rights laws, so it is not a question of them being allowed to discriminate in the hiring practices. But how do you see the control of one plant, or one unit of a corporation triggering coverage of the entire corporation around the country?

Mr. FISH. I have problems with that concept of corporatewide coverage, and I think it is not really consistent with the coverage afforded State and local governments.

Mr. BARTLETT. So, you would look for ways to improve that?

Mr. FISH. I think that is an area that should be looked—should the entire corporation suddenly be covered, because of Federal financial assistance to one of several plants.

Mr. BARTLETT. In your judgment does this language in its present form, it apply to independent contractors, also, or a contractor, a vendor of the corporation, let's say a company, or a corporation has a Federal contract and it obviously triggers, does that mean that all of its suppliers and vendors are also, in your judgment, either covered by this language, or should be?

Mr. FISH. It is my understanding that they would not be covered under section 908(3) corporation; but that an independent contractor could possibly fall under the language in 908(4), just below that, on line 13, "any other entity."

Mr. BARTLETT. Would you then also think we may, at the committee level, explore ways to tighten up the "any other entity" language? Should we say more precisely what we mean?

Mr. FISH. I think that is our job as legislators, yes.

Mr. BARTLETT. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Armey.

Mr. ARMEY. No questions at this time.

The CHAIRMAN. Mr. Martinez, I understand you have no questions.

Mr. MARTINEZ. Yes, Mr. Chairman.

The **Chairman**. Mr. Owens.

Mr. **Owens**. No questions.

The **Chairman**. Mr. Henry.

Mr. **Henry**. No questions.

The **Chairman**. Mr. Penny.

Mr. **Penny**. I have no questions.

The **Chairman**. Mr. Fish, thank you again for a very excellent presentation before this committee.

Mr. **Fish**. Thank you.

The **Chairman**. Mr. Penny.

Mr. **Penny**. I am not sure if this was asked by someone, just prior to my entering the room, but I am interested, since the administration has solicited the assistance of some Senators introducing a rival piece of legislation, if you have any comments about the adequacy of the administration's bill? I would sure like to know of those.

Mr. **Fish**. Yes, sir. That was in my prepared text. Let me just read a brief paragraph to be responsive to the gentleman.

This is S. 272, introduced in the Senate. It also would amend the four laws in question, but only with respect to educational institutions, which you might say is a logical approach, since *Grove City* dealt with title IX, the Higher Education Act. But the approach does not address the legal facts that the Supreme Court's narrow interpretation of "program or activity" impacts on four of the civil rights laws.

So that other Federal aid recipients, such as States, localities, public and private organizations, as well as the noneducation activities of colleges and universities, would, under the Senate bill, continue to be judged under the narrow holdings of the two Supreme Court cases.

And I think that legislation, therefore, does not restore the prior enforcement coverage under all four laws.

Mr. **Penny**. Thank you, Mr. Fish.

Thank you, Mr. Chairman, for your yielding.

The **Chairman**. Mr. Gunderson.

Mr. **Gunderson**. No questions.

The **Chairman**. Mr. Perkins, I think is next on this side. Do you have a question?

Mr. **Perkins**. I will pass this time.

The **Chairman**. If there are no further questions, again, Mr. Fish, we thank you and certainly applaud the efforts that you have put forth in this particular field. You are continuing them, and this committee is, indeed, appreciative of what you are doing.

Mr. **Fish**. Thank you very much, Mr. Chairman.

The **Chairman**. Thank you.

The next witness is Mr. Mineta.

Mr. Mineta, we also wish to welcome you to the committee, and we look forward to your testimony.

STATEMENT OF HON. NORMAN Y. MINETA, MEMBER OF CONGRESS, CALIFORNIA

Mr. **Mineta**. Thank you very much, Mr. Chairman, and members of the committee, and the subcommittee.

I would like to thank you for allowing me the opportunity to testify today on one of the most important pieces of legislation before this Congress, the Civil Rights Restoration Act of 1985.

You and your committees have a long history of active involvement and major roles in civil rights issues. And today's hearing demonstrates your continued interest and concern on these important matters.

Last year the House, with overwhelming support from both sides of the aisle, passed the Civil Rights Act of 1984, a bill identical in principle to H.R. 700, only to see it die in the waning days of the Congress on the Senate side.

I was proud to be an original cosponsor of that bill, as I am equally proud to be an original cosponsor of H.R. 700, the Civil Rights Restoration Act of 1985. As these committees know, H.R. 700 overturns the limiting precedent of the Supreme Court decision in *Grove City College* v. *Bell,* handed down on February 28, 1984. This bill will restore the strength of the past civil rights measures enacted over the past 20 years, which provide the Federal funds that must not be used to support discrimination.

Specifically, the bill broadens the scope and coverage to match what was originally intended by Congress in title IX of its Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964, by defining "program or activity."

The bill sets forth the scope of coverage directly on the statute. There are no hidden agendas here. The bill does not, and is not intended to, expand the scope of coverage of the major civil rights laws beyond that of establishing the law as Congress intended, prior to the *Grove City* decision.

A year ago this past February, six Justices of the Supreme Court decided that Congress did not intend to broadly enforce discrimination laws at institutions which received the benefit of Federal funding.

In the opinion of the Court it said, and I quote,

> We have found no persuasive evidence suggesting Congress intended that the department's regulatory authority follow federally aided students from classroom to classroom, building to building, or activity to activity.

I believe the Court was wrong in its interpretation. I believe that its decision derailed a strong tradition of broad enforcement of Federal laws and regulations against discrimination. It was a tradition of enforcement firmly rooted in the mandate provided by congressional lawmaking, and the enlightened leadership in various Federal departments and agencies.

Mr. Chairman, the reason for passing H.R. 700 is relatively simple; the bill is not just the persuasive evidence the Court was looking for, it is a clear and concise statement of law. It conveys to the court, and any other doubting Thomas, that Congress has determined that any university, any State, or any local government, or any other institution that benefits from Federal funding must not discriminate.

It will prevent the folly, what the *Grove City* case now allows, requiring a university to enforce the law in its physics department, while allowing discrimination in its mathematics department.

I would like to make one more point, in the *Grove City* decision. The Supreme Court, in calling a lower court's reasoning flawed, wrote the following,

> Under the Court of Appeals' theory, an entire school would be subject to Title IX, merely because one of its students received a small BEOG Grant, or because one of its departments received an earmarked federal grant. This result cannot be squared with Congress' intent.

There is nothing flawed with the court of appeals' reasoning, Mr. Chairman. The Federal Government should be given the opportunity to enforce Federal laws against discrimination because one student received Federal aid. It should be given that opportunity, if one student receives 1 cent of Federal assistance.

We are not talking about the Federal Government requiring a university, or some other institution, to adhere to burdensome and controversial regulations. We are requiring them to follow established and accepted laws which prevent discrimination and guarantee that women, that those with disabilities, that black Americans, and that Americans of Asian and Hispanic ancestry receive equal treatment in all areas of their education, or employment.

Mr. Chairman, I would like to conclude with a remark made by President Kennedy, a remark that I suspect you will continue to hear throughout these hearings, and I quote,

> Simple justice requires that public funds to which taxpayers of all races contribute not be spent in any fashion which encourages, entrenches, subsidizes, or result in racial discrimination.

Again, Mr. Chairman, I want to thank you and the other members of the committees here today for your efforts on behalf of H.R. 700, and providing me with the opportunity to join you, as an original cosponsor of H.R. 700, as well as this opportunity to present my views.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Mineta.

[Prepared statement of Hon. Norman Y. Mineta follows:]

PREPARED STATEMENT OF HON. NORMAN Y. MINETA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman and Members of the Committee and the Subcommittee, thank you for allowing me the opportunity to testify today on one of the most important pieces of legislation before this Congress, the Civil Rights Restoration Act of 1985. Your and your Committees have a long history of active involvement and major roles in Civil Rights issues. Today's hearings demonstrate your continued interest and concern on these important matters.

Last year in the House, with overwhelming support from both sides of the aisle, passed the Civil Rights Act of 1984, a bill identical in principle to H.R. 700, only to see it die in the waning days of the Senate. I was proud to be an original cosponsor of that bill as I am equally proud to be an original cosponsor of H.R. 700, the Civil Rights Restoration Act of 1985.

As these Committees know, H.R. 700 overturns the limiting precedent of the Supreme Court decision in *Grove City College* v. *Bell* handed down on February 28, 1984. This bill will restore the strength of past civil rights measures enacted over the past twenty years which provide that federal funds must not be used to support discrimination. Specifically, the bill broadens the scope and coverage to match what was originally intended by Congress in Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and title VI of the Civil Rights Act of 1964. By defining "program or activity", the bills sets forth the scope of coverage, directly on the statute. There are no hidden agendas here. The bill does not, and is not intended to, expand the scope of coverage of the major civil rights laws beyond that of reestablishing the law as Congress intended it prior to the *Grove City* decision.

A year ago this past February, six justices of the Supreme Court decided that Congress did not intend to broadly enforce discrimination laws at institutions which received the benefit of federal funding. In the opinion of the Court it said, "We have found no persuasive evidence suggesting Congress intended that the department's regulatory authority follow federally aided students from classroom to classroom, building to building, or activity to activity."

I believe the Court was wrong in its interpretation. I believe that its decision derailed a strong tradition of broad enforcement of federal laws and regulations against discrimination. It was a tradition of enforcement firmly rooted in the mandate provided by Congressional law-making and the enlightened leadership in various federal departments and agencies.

Mr. Chairman, the reason for passing H.R. 700 is relatively simple. The bill is not just the persuasive evidence the Court was looking for; it is a clear and concise statement of law. It conveys to the Court, and any other doubting Thomas, that Congress has determined that any university, state or local government, or any other institution that benefits from the federal funding, must not discriminate. It will prevent the folly that the *Grove City* case now allows: requiring a university to enforce the law in its physics department, while allowing discrimination in its mathematics department.

I would like to make more one more point. In the *Grove City* decision the Supreme Court, in calling a lower court's reasoning "flawed" wrote the following, "Under the Court of Appeals" theory, an entire school would be subject to Title IX merely because one of its students received a small BEOG grant or because one of its departments received an earmarked federal grant. This result cannot be squared with Congress' intent."

Mr. Chairman, there is nothing flawed with the Court of Appeals' reasoning. The federal government should be given the opportunity to enforce federal laws against discrimination because one student receives federal aid. It should be given that opportunity if one student receives one cent of federal assistance. We are not talking about the federal government requiring a university or some other institution to adhere to burdensome and controversial regulations. We are requiring them to follow established and accepted laws which prevent discrimination and guarantee that women, those people with disabilities, black Americans, and Americans of Asian and Hispanic ancestry receive equal treatment in all areas of their education or employment.

I would like to conclude with a remark made by President Kennedy, a remark that I suspect you will continue to hear throughout these hearings: "Simple justice requires that public funds, to which taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination."

Mr. Chairman, I want to thank you and the other members of the committees here today for your efforts on behalf of H.R. 700 and providing me with the opportunity to join you as an original cosponsor of H.R. 700 as well as this opportunity to present my views.

The CHAIRMAN. The Chair has no questions. I would like to thank our distinguished colleague for a very excellent statement. I think it is very clear, concise, and I think it raises no issues that the Chair deems requiring even a question.

Mr. Gunderson.

Mr. GUNDERSON. No questions.

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I am delighted to have the leadership of the gentleman from California once again in front of this bill.

Do you have any idea what the other piece of legislation proposes that will be considered in the other body? Have you had that opportunity?

Mr. MINETA. I haven't had an opportunity to look at it, and really, it only deals with the one part of it, and that is as it relates to the educational institutions. And I think it ought to cover the other acts, as we have included here, in H.R. 700.

Mr. CONYERS. There are four civil rights provisions that need to be repaired as we correct the Supreme Court, and it would be unrealistic to just look at the provisions concerning sex discrimination.

Mr. MINETA. No question that as it relates to the decision of the Supreme Court, this will restore and repair the damage of that decision I think, as it relates to the others acts, it is really preventive maintenance, to make sure that we don't run into the same problem.

Mr. CONYERS. Mr. Mineta, do you have the feeling that we come here to repair the Supreme Court decision in an atmosphere in which civil rights progress has either come to a stop, or is actually slipping, that we are losing some grip on the progress of eliminating racial discrimination in our society here?

Mr. MINETA. Well, without any question, from my personal perspective, I think we are going back, both under this administration, as well as under this Supreme Court, we are losing what gains have been made in the past, and that disturbs me very, very deeply.

Mr. CONYERS. Well, in that environment, it would seem that this would be a very modest repair in the safety net of civil rights. And I am glad to see that you recognize that, and are out front, again, as always on the case.

Thanks a lot.

Mr. MINETA. Thank you, Mr. Conyers.

The CHAIRMAN. Would the gentleman yield?

Mr. CONYERS. I yield to the Chairman.

The CHAIRMAN. In answer to Mr. Conyers, concerning the limitation of the alternative bill known as the Dole bill, you were asked whether or not the bill was flawed in that it covered only one field, that is the field of education. I think the answer was that it does not cover the other areas covered by the Civil Rights Act, or the Rehabilitation Act, Age Discrimination and title VI.

Would you also agree that discrimination in other areas outside of this, such as in the field of health, social services, transportation, housing, and so forth, which may also be supported by financial assistance should be a concern to us?

Mr. MINETA. Absolutely. And as the person who also Chairs the Aviation Subcommittee, Mr. Chairman, you will recall we recently had some incidences involving the equal access to air transportation by handicapped.

The CHAIRMAN. Thank you very much.

Mr. Jeffords.

Mr. JEFFORDS. Thank you, Mr. Chairman.

First, Mr. Tauke, who was one of the original cosponsors, and is unable to do so, I would like to make his statement a part of the record, if that is all right.

The CHAIRMAN. Without objection, so ordered.

Mr. JEFFORDS. I just want to thank my good friend from California, for his excellent statement. I appreciate his work in this area, and I do not have any further questions.

The CHAIRMAN. Mr. Martinez.

Mr. MARTINEZ. No questions.

The CHAIRMAN. Mr. Bartlett.

Mr. BARTLETT. Thank you, Mr. Chairman.

I would like to make sure that we all understand and that the record is clear in this hearing, I am not an expert on the other body, or on the Dole bill that was introduced in the other body, but my understanding is that the so-called Dole bill does include coverage of the age, sex, race, and handicapped statutes, but it applies them only to the area of educational institutions, which was the only ruling made in the *Grove City* case. This is different from the position that I think we perceived from last year.

So, there has been substantial change by the administration. I do hope that these hearings—and I know that they won't—don't become some sort of a partisan bashing session. We have a serious problem here that was caused by *Grove City,* that I think Congress needs to look seriously at how to solve that.

And I yield back the rest of my time, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Owens.

Mr. OWENS. No questions.

The CHAIRMAN. Mr. Fawell.

Mr. FAWELL. No questions.

The CHAIRMAN. Mr. Hayes.

Mr. HAYES. Just one question, briefly. I want to thank you, first, for what has been fine leadership to a very basic issue.

Have you detected any erosion of the support for H.R. 700 in terms of the support we had last year, in view of the continued backward step of the administration in all areas of the civil rights, such as affirmative action, support for cuts in social programs, as it relates to minorities? Do you think we can expect the same kind of support out of the House, which we both are a part, which we got last year?

Mr. MINETA. Well, I would assume that, given how strong that support was last time, that we would be in a position to continue that kind of support as it relates to H.R. 700. And I intend to work toward that end.

The CHAIRMAN. Mr. Henry.

Mr. HENRY. No questions.

The CHAIRMAN. Mr. Perkins.

Mr. PERKINS. No questions.

The CHAIRMAN. Mr. Dannemeyer, do you have a question.

Mr. DANNEMEYER. No questions.

The CHAIRMAN. Mr. Bruce.

Mr. BRUCE. No questions.

The CHAIRMAN. Mr. Gunderson.

Mr. GUNDERSON. No questions.

The CHAIRMAN. Mr. DeWine.

Mr. DEWINE. No questions.

The CHAIRMAN. Does anyone have any questions? If not——

Mr. MINETA. Mr. Chairman, I would like to make one further observation. I would like to see the nameplate being changed in front of Mr. Jeffords, because it would do him more honor to have his own name before him.

Mr. Martinez. Mr. Chairman, since you were begging for questions——

The Chairman. I am not begging for questions, Mr. Martinez, I simply want to be courteous whenever possible.

Mr. Martinez. I would like, if I may—Norm, in your testimony you touched a little bit on the fact that under the *Grove City* decision that discrimination would be allowed in the math department, while discrimination in the French department would not be allowed because it received Federal financial assistance.

Would you elaborate on that, does 700 change that now? If funds go to any student in a college, that the whole college comes under that umbrella of having to comply with the discrimination law?

Mr. Mineta. Right, I think what we are doing here is saying that the enforcement of Federal law will follow the Federal dollars, regardless of where it might go. And I think that is proper. So, that in terms of the definition, under the bill, it clarifies what was the congressional intent, and I don't think it leaves that as an open question, as the Court has interpreted it.

So, what we are doing is saying that the enforcement of Federal law ought to be able to follow those Federal dollars.

The Chairman. The Chair assumes that there are no further questions forthcoming from any of the members.

Again, Mr. Mineta, we wish to thank you for your contribution, and the great job that you have done in this field for a very, very long time.

Mr. Mineta. Thank you for your leadership, Mr. Chairman.

The Chairman. Thank you, Mr. Mineta.

Is the Honorable Tony Coelho present?

If not, the Chair will call a panel of distinguished Americans who have been asked to testify this morning before the joint committee, beginning with Mr. Benjamin Hooks, executive director of the National Association for the Advancement of Colored People; Ms. Judy Goldsmith, of the National Organization for Women; Dr. Arthur Flemming, chairman of Citizens Commission on Civil Rights.

Will those individuals named please come forth and be seated at the witness tables?

The Chair will not attempt to single them out as they are all well known as experts in the issues which they will be addressing this morning. And they are personal friends, certainly of those of us on this side of the table.

And with that, the Chair will proceed to call on them in the order in which they are listed, beginning with Mr. Benjamin Hooks.

STATEMENT OF BENJAMIN L. HOOKS, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Hooks. Thank you very much, Mr. Chairman, members of the committees, members of the panel, I am very happy to have the opportunity this morning to say a word in answering support of the Civil Rights Restoration Act of 1985, and to urge a speedy passage by the Congress.

As has been discussed this morning, this bill deals with four major civil rights laws, the Age Discrimination Act of 1975; section 504 of the Rehabilitation Act; title IX of the Education Amendments of 1972, and title VI of the Civil Rights Act of 1964.

I just want to take 2 or 3 minutes this morning, Mr. Chairman, to revisit the climate in the years immediately preceding the passage of the Civil Rights Act of 1964, so that we might understand the significance of all the laws affected by the *Grove City* decision.

In 1954, the Supreme Court in *Brown* v. *Board of Education* legally removed the ugly standard of "separate but equal." In 1957, the first Civil Rights Act since Reconstruction was passed. The early 1960's was a period of domestic crisis, a time of white mob violence and peaceful protests regarding the denial of equal rights. Media pictures of fire hoses and cattle prods used against groups of blacks and whites, and even police dogs turned on black men, women and children were not uncommon occurrences.

Selected buying campaigns were launched in more than 800 communities, it demonstrated and underscored the intensity, Mr. Chairman, of the frustration and discontent of the Nation's black citizens with the status quo.

A. Philip Randolph's two decade-old call for a march reached fruition when more than 250,000 blacks and whites participated in the historic 1963 march. And it is in that climate that President Kennedy submitted the bill of 1963. In doing so he said, "We are confronted primarily with a moral issue—the fires of frustration and discord are burning in every city, North and South, where legal remedies are not at hand—redress is sought in the streets, in demonstrations, parades and protests which create tensions and threaten violence."

After the assassination of President Kennedy, President Johnson said, "No eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long."

It seems to me in that context that we must consider what the Senate was trying to do and the House, from the beginning to the end, title VI of the Civil Rights Act of 1964 was supported by a bipartisan coalition in the House and the Senate, in both Houses attempts to weaken this section were defeated, even though the bill was highly contested in the Senate, where there were over 121 rollcall votes, and a 57-day filibuster. The filibuster was ended by a 71-29 cloture vote.

All participants in this historic legislation understood that they were formally ending the across-the-board "separate but equal" racial doctrine. Congress was affirmatively directing Federal agencies not to support unlawful racial discrimination.

It is clear that the Congress meant to end Federal support of illegal discrimination wherever it is found. And that the Congress intended the scope of coverage to be broad. It was remedial, safeguards against the use of Federal funds in a way that encourages or permits discrimination.

And until the *Grove City* decision, for 20 years, this congressional intent was not questioned. And it is in that spirit, Mr. Chairman, and members of the committees, that we ask for support of the bill that you are now considering, H.R. 700. I believe I have the number right. And that it would be, in my judgment, in keeping with the original intent of Congress in passing H.R. 700, which will restore in all four of these situations, the status quo, as we believe it was intended by Congress 20 years ago, and restates the national policy as correctly embodied in the Constitution.

I want to end my presentation now, in the interest, knowing that there are others on this panel, and thank you for the opportunity to present our views, and acknowledge the presence of Ms. Althea T.L. Simmons, our Washington bureau representative.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Hooks. We join with you in recognizing Ms. Althea Simmons, and commend her service to the Congress.

[Prepared statement of Benjamin L. Hooks follows:]

PREPARED STATEMENT OF BENJAMIN L. HOOKS, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the committees, I am Benjamin L. Hooks, executive director of the National Association for the Advancement of Colored People. Accompanying me today is our chief lobbyist and Washington bureau director, Althea T. L. Simmons.

I appreciate this opportunity to appear before you in answering support of the Civil Rights Restoration Act of 1985, and to urge its speedy passage by the congress.

This bill deals with four (4) major civil rights laws—the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act, Title IX of the education amendments of 1972 and the Civil Rights Act of 1964.

To fully appreciate the significance of the laws affected by the *Grove City* decision, it may be helpful to revisit the climate of our nation in the years immediately preceding the passage of the Civil Rights Act of 1964.

The Supreme Court's 1954 decision in *Brown* v. *Board of Education* legally removed the ugly standard of "separate but equal." In its aftermath, the Congress, in 1957, passed the first civil rights act since reconstruction. Black Americans, long denied equality of opportunity, stepped up activity for equal rights on all fronts.

The early 1960's was a period of domestic crisis. A time of white mob violence and peaceful protests regarding the denial of equal rights. Media pictures of fire hoses and cattle prods used against groups of blacks and whites and even police dogs turned on black men, women and children were not uncommon occurrences.

Demonstrations and/or selective buying campaigns launched in more than 800 communities graphically underscored the intensity of the unrest, frustration and discontent of the nation's black citizenry with the status quo.

A. Philip Randolph's two decades-old call for a march on Washington reached fruition when more than 200,000 blacks and whites together participated in the historic 1963 march on Washington for jobs and freedom. This turmoil clearly emphasized the plight of black Americans in a democratic society and issued a call to the conscience of the Congress and the Nation.

This quest and demand for equality and what it portended was instrumental in moving a skeletal administration-offered civil rights measure through the Congress which covered voting rights, public accommodations, school desegregation, employment etc. President Kennedy, in submitting the bill said: "We are confronted primarily with a moral issue . . . the fires of frustration and discord are burning in every city, north and south, where legal remedies are not at hand . . . redress is sought in the streets, in demonstrations, parades and protests which create tensions and threaten violence."

After the assassination of President John F. Kennedy, President Lyndon Johnson said: "No eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long."

Deplorable incidents of discrimination were revealed to the 88th Congress during its consideration of this measure which was to become the Civil Rights Act of 1964. Incidents of discrimination were rampart at all levels, including the basic one of health care. Hospitals were using Federal assistance and denying equal treatment to black Americans on the basis of color. Black doctors were being denied equal access to hospitals or were segregated within the hospital facilities.

Unequal treatment was also to be found in nursing homes and clinics. Similar incidents were reported in other areas of civil rights. Conscience dictated that remedial measures be taken.

From beginning to end, title VI of the Civil Rights Act of 1964 was supported by a bi-partisan coalition in the House of Representatives and the Senate. In both Houses, attempts to weaken this section were defeated even though the bill was hotly contested in the Senate where there were over 121 roll call votes and a 57 day filibuster. The filibuster was ended by a 71-29 cloture vote, marking the first successful cloture move against a civil rights filibuster since rule 22, permitting cloture, was adopted in 1917.

All participants in this historic legislation understood that they were formally ending the across-the-board "separate-but-equal" racial doctrine. Congress was affirmatively directing Federal agencies not to support unlawful racial discrimination.

It is clear that the Congress meant to end Federal support of illegal discrimination wherever it is found, and that the Congress intended the scope of coverage to be broad. Title VI was seen as remedial, I./E., "safeguards against the use of Federal funds in a way that encourages or permits discrimination." Those safeguards are as broad as the constitution.

For twenty years, until the Grove City decision, this congressional intent was not questioned. Although the February 1984 decision in *Grove City College* v. *Bell*, specifically dealt with title IX of the education amendments of 1972, it also affects title VI of the Civil Rights Act of 1964 and the Age Discrimination Act of 1975 and section 504 of the Rehabilitation Act. These major civil rights statutes are modeled after title VI, although there are differences between the statutes, such as the title IX limitation to education, which says: "No person in the United States shall, on the grounds of race, color or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

When the court in Grove City College held that the anti-discrimination prohibition does not apply to the entire college but merely to the financial aid office, the interpretation of all four statutes was thereby narrowed. However, when Congress evidenced concern about Federally-supported racial segregation in fellowship and training grants, Federal-impacted education fund, vocational education program or Hill-Burton Act constructed hospitals the concern was not narrow, but broad.

Even fund termination, although targeted to the discrimination found, was conceived to be as broad or narrow as the evil to be excised. Fund termination was of great concern; as a consequence, voluntary compliance was the preferred enforcement tool. Due process guarantees of notice, a finding of non-compliance and notice to the Congress prior to termination were built into title VI with full knowledge that untimately a cut-off of aid, the hardest sanction, might have to be exercised. The focus of title VI, however, is upon eliminating racial discrimination, not punishment.

Mr. Chairman and members of the committees, we have accomplished a great deal since 1964. Some pollyannas would have us believe that racial discrimination has been eliminated from the fabric of American society. However, this is nothing more than wishful thinking. The 1983 march on Washington and a look around the country will show that Jim Crow is alive and well in America, albeit in a slightly more subtle form.

Today, as in 1964, the Federal Government must not support racial discrimination. H.R. 700, like title IV, the Civil Rights Act of 1964, does not create new law, it merely restates our national policy as embodied in the Constitution.

I urge you to swiftly pass H.R. 700.

Thank you for this opportunity to present our views.

The **CHAIRMAN**. The next witness is Ms. Judy Goldsmith, of the National Organization for Women.

STATEMENT OF JUDY GOLDSMITH, PRESIDENT, NATIONAL ORGANIZATION FOR WOMEN

Ms. **GOLDSMITH**. Thank you very much, Mr. Chairman, members of the committee.

I will present an abbreviated version of my testimony, and would ask that it be entered into the record in its entirety.

The **CHAIRMAN**. Without objection, so ordered.

[Prepared statement of Judy Goldsmith follows:]

PREPARED STATEMENT OF JUDY GOLDSMITH, PRESIDENT, NATIONAL ORGANIZATION FOR WOMEN

Good morning. I am Judy Goldsmith, president of the National Organization for Women, the nation's largest and oldest feminist organization with 250,000 members.

I am here to testify in support of the Civil Rights Restoration Act. This legislation is urgently needed to correct the devastating Supreme Court decision in Grove City College v. Bell. It has now been over a year since the Supreme Court ruled that a college receiving federal funds only for student financial aid is required to comply with Title IX but only in its financial aid program. The Court's decision legalized school-by-school, department-by-department and program-by-program discrimination against women and girls in federally funded educational institutions. This ruling, in essence, legitimizes the government subsidization of discrimination. This is a disgrace to a nation that has prided itself on the principle of equal justice for all under the law. It also serves as a reminder that women are still considered to be second-class citizens in this country. Equal education rights that are subject to the whims of governmental change can be eliminated as quickly as they are established. Such rights are not sufficient.

The Court's ruling mandating a narrow interpretation of Title IX of the Education Amendments of 1972 has much larger ramifications, however. Because Title IX was based on Title VI of the Civil Rights Act of 1964 (prohibiting discrimination based on race), as were the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination based on handicap) all have similar language. The "program or activity" language contained in all four statutes was central to the Supreme Court's interpretation of the law. Thus, all protections afforded under these statutes are jeopardized by the Grove City ruling.

In the past year since the Court's ruling left millions of Americans virtually unprotected, the lives of real people have been changed as a result of the Court's decision and Congress' inability to enact a legislative remedy. Although all of the above-mentioned populations are equally threatened, I will focus my testimony on the effect of the Court's ruling has had on women and girls.

A young woman at Northeastern University filed a complaint under Title IX. She charged that the university had not taken action on a sexual harassment complaint she had filed because there was no grievance procedure at the university although one was required by Title IX. Under Title IX prior to the Grove City decision, the Office for Civil Rights needed only to determine that the university received federal funds. Since the Grove City decision, the Office for Civil Rights must determine whether federal funds go to the program in which discrimination is charged. Although the university had received over two million dollars under the federal college housing loan program to renovate student housing, in addition to approximately ten million dollars in student aid for the academic year 1983-1984, the sexual harassment had occurred in a building of the Economics Department which had not been built or renovated with federal funds. If the alleged harassment had taken place in a student dorm, the Office for Civil Rights would have been able to investigate. The Education Department has placed this case on "policy hold".

This is but one example of the many instances of discrimination previously covered under civil rights statutes such as Title IX. Complaints previously investigated by the Office for Civil Rights are no longer being pursued in light of the Grove City ruling. At least 63 cases in the Department of Education have been closed, limited or suspended. And it's only been a year.

The American dream has always been about equal justice, fairness and trying to achieve a better life for oneself and one's family. Education is recognized as one of the most important stepping stones to a better life. Access to educational opportunity is crucial to advancement in a career and economic security. Yet, as recently as ten years ago, many educational opportunities had been considered off limits to women, either directly through policy, or through more subtle forms of discrimination. The discrimination that barred women from professional schools or the career of their choice cheated many young women out of achieving their full potential and it cheated our country out the talents and skills of half our population.

Segregation by sex took place in the classroom and on the playing field. While the benefits of physical fitness and the character-building advantages of team work were emphasized as important to boys' development, they were rarely available to girls, although these same qualities were obviously valuable to girls as well.

Women who lacked sufficient funds but wished to go to college were not even considered for athletic scholarships, even if they excelled in sport(s). There are currently over ten thousand young women now attending college on athletic scholarships, including many who would not have had the financial means to attend without that assistance. The number of women in college sports has increased by 250% in the last decade. The number of high school girls playing sports has increased from 7% to 35% of all students since Title IX was enacted. Development of sports skills at the junior high and high school levels through sports development programs is enabling more young women than ever before to compete for and pursue athletic scholarships, or athletics as a career. Perhaps the most dramatic manifestation of strides in athletic advancement for women is the performance of young American women at the Olympics last year. Several of these women have acknowledged that Title IX was a major factor in making their success possible.

Title IX has also encouraged women to pursue non-traditional courses of study. The percentage of professional degrees conferred on women rose dramatically during the first decade of Title IX. The percentage of law degrees earned by women increased from 6.9% to 32.4%; the percentage of medical degrees increased from 9% to 25%; and the percentage of PhD's increased from 17% to 32%. As a result of educational opportunities, increasing numbers of women are now on career paths that had previously been thought of as the exclusive territory of males.

And, Title IX did not benefit only students. Almost one-third of all professional women in the United States work in education or education-related fields. Their rights as workers in education have been protected by Title IX. It has been the impetus behind school systems upgrading salaries and benefits to ensure that men and women receive equal pay for teaching similar courses. Title IX has also been the driving force behind the increased number of female school administrators and principals, jobs once held almost exclusively by men.

Title IX has also had a motivating effect on schools and school systems which are not even covered by Title IX. Schools at all levels have reviewed their practices and found ways to make improvements they are not even mandated to make. The presence of a strong Title IX as a reminder that Congress intends women and girls in education to be treated in the same manner as men and boys has been a boon to creating wider opportunities for all. The very fact that women and girls are receiving training that provides them with background to enter heretofore predominately male fields is beginning to show signs of narrowing the "wage gap", however slightly. Title IX is a cornerstone of economic equality.

The economic gains enjoyed by women as a result of improved educational opportunities are shared with family and society as a whole. In 1982, more than 9.4 million families -- one out of six -- were maintained solely by women. More than one-third of families headed by women live in poverty. In order to eliminate the feminization of poverty, education must adequately prepare women to face new career challenges and train them to fill the jobs that require a solid command of mathematics, science and computer language. It is heartening to see that an increasing number of women are enrolling in these courses in order to secure careers in fields in which they are interested and that show great promise for employment opportunities in the decades ahead.

Yet the modest gains we have made -- and good as they are, they are only a beginning -- were seriously threatened by the Court's decision in February 1984 and by Congress' failure to pass legislation last year restoring the rights previously enjoyed by so many. Coverage that was once comprehensive is now a legal patchwork. The potential for federally subsidized discrimination is virtually boundless. Women's intercollegiate athletic programs could be limited or abolished and there would be nothing stopping educational institutions from providing inferior equipment, facilities or uniforms to women athletes or limiting the number of opportunities for women coaches, as they once did. Colleges could require that women live on campus, but give men the option of living off campus. There would be no protection for female students against sexual harassment unless they are participating in a college program receiving federal financial assistance and then only during the hours of their involvement with the program.

As real and painful as the litany of cases is, just as real is the signal that the Court's decision and the subsequent interpretation of these laws is sending out. It demonstrates that it is once again legal to use taxpayer funds to discriminate against those taxpayers who happen to be women, minorities, aged or the physically challenged. It signals a return to a time many of us had thought we had left forever.

We as a nation cannot afford to go back to that time. We must restore the legal protections against discrimination for women, minorities, the disabled and the elderly. We cannot as a nation tolerate the damage that will be done to real people's real lives if we do not act now to reverse legislatively the Supreme Court's decision in Grove City. The Civil Rights Restoration Act restores the spirit and the letter of the four statutes. Never has one law meant so much to so many.

The Grove City decision and its complete and welcome acceptance by the present administration has made it clear that some in this nation still believe that discrimination is acceptable. Only by strong and comprehensive legislation such as we are here to endorse today can Congress, on behalf of all people, declare unequivocally and forcefully that we as a nation will not tolerate discrimination at the expense of the taxpayer. We must send out our own signal that if institutions want to discriminate, they will have to do it on their own nickel, not the government's.

We must also send a clear signal that we understand that the Court's ruling did not affect only a small portion of our society, as this administration claims. We will not be taken in by the divide and conquer strategy of this administration and its allies. Women share the concerns of all the constituencies represented here today. We are a part of each of the constituencies as well -- women come in all ages, all colors and are subject to the same physical and mental challenges as men. To accept something less than total restoration of the protections of all four statutes is simply unacceptable. We are here today to say that we are asking only for a restoration of our rights; we are asking only for simple justice. The legislation before us today accomplishes that, and we urge its speedy adoption.

Injustice Under the Law:

The Impact of the *Grove City College* Decision on Civil Rights in America

Prepared by:

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Februrary 28, 1984: Implications

Most Americans think there are laws that protect people from discrimination. And there are. Yet, because of a Supreme Court ruling on February 28, 1984, many Americans—women, disabled persons, people of color and older people—lost important civil rights protections.

What is *Grove City College v. Bell* and how did it alter the basic civil rights assured to citizens under law? To understand the impact of the ruling, it is necessary to look beyond Title IX of the Education Amendments of 1972, the law immediately affected by the ruling, and to trace the intent of Congress in creating a group of civil rights laws designed to protect Americans from discrimination in all federally assisted programs.

Over the last two decades four laws were enacted to prevent the federal government from supporting or subsidizing discrimination. The intent of these laws was best described by President John F. Kennedy in explaining the purpose and scope of the first of these laws, Title VI of the Civil Rights Act of 1964: "Simple justice requires that public funds to which all taxpayers of all races contribute, not be spent in any fashion which encourages, subsidizes or results in racial discrimination."

The four basic civil rights statutes are as follows:

Title VI of the Civil Rights Act of 1964, which protects against discrimination on the basis of race, color or national origin in federally assisted programs or activities;

Title IX of the Education Amendments of 1972, which protects the rights of women and girls in educational programs or activities receiving federal financial assistance;

Section 504 of the Rehabilitation Act of 1973, which prohibits recipients of federal financial assistance from discriminating against disabled persons;

The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services and benefits supported by federal funds, with the exception of employment practices.

These four laws ban discrimination in "programs or activities" receiving federal financial assistance. For many years, under both Republican and Democratic Administrations, this was interpreted as Congress had intended, to prevent all institutions receiving federal funds from discriminating against women, minorities, disabled persons or older people in any aspect of their activities.

Then, in *Grove City College v. Bell*, the Supreme Court held that a college receiving federal money only in the form of student financial aid is only required by Title IX to prohibit discrimination in its student financial aid program.[*] Under the new ruling, the rest of the institution was free to discriminate on the basis of sex.

The language of Title IX was modeled closely after that of Title VI of the Civil Rights Act of 1964, and then repeated in later civil rights statutes—including Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. Thus, the *Grove City College* decision has broad and serious implications for all persons protected under these civil rights statutes. The decision affects almost every recipient of federal funds, including hospitals, correctional facilities, airport authorities, state highway departments, municipal utilities and county school systems. Unless the discrimination is tied specifically to a federally assisted program, race, sex, disability and age discrimination cannot be investigated or corrected.

Under the new decision, federal money would continue to flow to recipients that openly discriminated. And, because only four percent of the more than $13 billion in federal assistance received by colleges and universities is earmarked for specific programs, most students stand to be vulnerable to discrimination through most, if not all, of their college experience.

Lest anyone doubted the implications of the ruling, they had only to consult the Assistant Attorney General for Civil Rights in the Department of Justice, who immediately declared that this narrow interpretation applied to other nondiscrimination laws for recipients of federal financial assistance. Beginning February 28, 1984, it was open season on civil rights. To assess the damage, civil rights advocates had only to watch and wait.

Grove City College: Impact

The impact of the Supreme Court decision was immediate. On March 8, 1984—a little over a week after the *Grove City College* decision—the Department of Education dropped sex discrimination charges against the University of Maryland's intercollegiate athletics program because the athletics program did not receive direct federal funding.

The Department's Office for Civil Rights—which enforces Title VI, Title IX, Section 504 and the Age Discrimination Act as they apply to education—had uncovered discrimination in several areas, including travel and per diem allowance, the provision of support services, and the accommodation of student interests and abilities. Yet, female athletes and coaches at the University of Maryland and other universities no longer had federal protection against this discrimination.

The University of Maryland case was just the beginning. In the wake of the *Grove City College* decision, at least 63 cases in the Department of Education have been closed, limited or suspended. The majority (44) of these are Title IX cases but 14 Section 504 cases and five Title VI cases also have been affected.

In addition, a dozen other cases that were in the formal enforcement stage still are jeopardized. These are cases where discrimination has been found, voluntary compliance was refused, and recipients are using the Supreme Court's decision as a defense against federal enforcement.

The decision has created absurd results in many instances. Complaints are not investigated because the alleged discrimination took place in a building not constructed or renovated by federal loans. When complaints are investigated, the whole process takes longer because the federal government has to search for federal money connected with a specific program. The paperwork for institutions has increased as they are asked to show precisely where the current federal dollars are, and in some instances where past federal assistance went (as in the case of buildings or equipment).

Clear violations of federal law go uncorrected while students lose valuable education that can rarely be recovered and employees lose jobs or are denied them. Prolonged debate takes place over what constitutes a "program or activity" under the civil rights law, while the universities, schools, and correctional facilities receive millions of federal dollars.

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[*] On the same day as the *Grove City College* ruling, the Supreme Court extended this narrow interpretation to a Section 504 employment case, *Consolidated Rail v. Darrone*. Although the court correctly identified Consolidated Rail as a recipient of federal dollars, it applied a narrow interpretation to the term "program or activity," thus sending a clear signal that it intends to apply the same limitation to all civil rights laws.

Injustice Under the Law: The Evidence Mounts

Described below are just a few real-life examples of how the *Grove City College* decision already has affected students and employees and has hampered federal enforcement activities. These examples are taken from *actual* cases; the Office for Civil Rights (OCR) docket number of each case is listed.

- A student at Hill Top Beauty School in Daly City, California complained to OCR that clients were more often assigned to white students than Black students, that Black students were assigned to Black clients and that clean up duties not properly the responsibility of students were given to Black students. Many students attend Hill Top with the help of federal assistance such as Pell Grants and National Direct Student Loans.

But OCR decided it could not investigate the complaint because the alleged discrimination occurred in the Practical Training part of the cosmetology course which did not receive direct federal funds. The case was closed. Now there will never be any investigation of the truth or falsity of the charges of discrimination. OCR #09-83-4004.

- A Northeastern University (Boston, Massachusetts) student filed a Title IX complaint. She said the university failed to take action to redress a sexual harassment complaint and had no grievance procedure, as required by Title IX. Prior to the *Grove City College* decision, OCR only had to determine that the university received federal funds. Now OCR must find whether federal funds go to the program in which discrimination is charged. In this case, it was the Economics Department located in Lake Hall. And the University had received $2,216,000 under the College Housing Loan Program to renovate student housing, as well as $9.9 million in student aid for 1983-84.

But OCR decided that it could not investigate the complaint because Lake Hall, where the alleged discrimination occurred, was not built or renovated with federal loans. Ironically, if the alleged sexual harassment had occurred in student dorms which were renovated with federal loans, the complaint would have been investigated. This case is on "policy hold" at the Education Department. OCR #01-84-2020.

- A maintenance worker at the University of Charleston in West Virginia complained to OCR that he had been the victim of discrimination in employment because he was disabled. The University's lawyers told OCR that it received no federal funds for maintenance and therefore OCR had no authority to investigate. Since 1979 the University of Charleston has received approximately $3,376,182 in federal funds from the Department of Education, including $472,940 in federal student aid in the 1983-84 school year.

But OCR put this complaint on "policy hold" because it could not link the allegation of discrimination to a specific, federally funded program. Section 504 is the only federal law protecting disabled persons from employment discrimination based on their handicap. Without an OCR investigation, this disabled employee has no other recourse under federal law. OCR #03-84-2040.

- A woman instructor at the Fashion Institute of Technology in New York City complained to OCR that she was discriminated against in employment because of her sex. OCR did not investigate because it could not show that Federal funds went directly to the Department of Fashion Design, where she worked. The Fashion Institute, however, received almost a quarter of a million dollars in federal funds in 1983 and 1984.

Prior to the Supreme Court's decision, where the woman worked would not have made any difference, as long as the Institute itself received federal money. Now the case is on "policy hold" at OCR. OCR #02-77-0560; #02-83-2049.

- Mecklenburg County Public Schools in Virginia assigns elementary and junior high school students to "ability" levels within a grade. Based on test scores, available space, teacher judgment, and "best educational environment," students are grouped together for all classes. The lowest groups are predominantly Black. These students show no improvement in academic performance.

OCR found that the district violated Title VI because it assigned Black students to racially segregated classes with no educational justification. The school district argues that OCR has not shown that ability grouping occurs in a "program" receiving federal funds. Until the Title VI violation is corrected, Black children in the lowest track will continue to receive an inferior and racially segregated education. The case is now before an Administrative Law Judge. OCR #03-81-5013.

■ A former corrections officer at the Perryville, Arizona Correctional Center filed a complaint that he had been terminated because of his disability. The Arizona Department of Corrections receives $450,000 of federal funds under the Education of All Handicapped Children Act and another grant under the Vocational Education Act.

But OCR declined to investigate the complaint because the complainant was not employed in, nor did he have any "substantial" contact with, any federally assisted education program at Perryville. OCR closed the case, leaving this individual completely unprotected by federal law requiring non-discrimination in employment of disabled persons. OCR #09-83-40003.

■ The State University of New York at Buffalo received more than $1.8 million in federal funds from the Department of Education in 1983 and 1984. But when OCR notified the university that it would conduct a Title VI compliance review of the Computer Science Program, university officials resisted. Citing the *Grove City College* decision, they said OCR could not do the review because the Computer Science Program received no federal funds.

OCR backed off. It decided to do a more limited review of admissions to the Computer Science Program because admissions is, under the *Grove City College* decision, a "program" that receives federal financial assistance through federal student aid. Before that decision, there would have been no question that OCR could investigate any part of an institution that received federal funds. Now OCR can only determine whether minority students are admitted to the program on a nondiscriminatory basis but not whether they encounter unequal treatment once they are enrolled in the Computer Science Program. OCR #02-84-6025.

■ A deaf woman enrolled at West Georgia College in Carrollton for the purpose of obtaining certification as a teacher of disabled students. When the college denied her a sign language interpreter she filed a complaint of discrimination with OCR. OCR found that the college's practice violated Section 504. Although the College receives $1,835,464 in federal aid, including a $40,165 grant under the Education for All Handicapped Children Act, the College argued that the woman is not enrolled in a program that receives federal financial assistance because she is not seeking a degree. Further, the College argued that classroom instruction was not a program receiving federal aid.

Therefore, any deaf student in any course at the college is denied services which would enable him or her to benefit fully from the instruction. This discriminatory policy affects deaf students enrolled and discourages other deaf persons from attending West Georgia College. College officials are using the *Grove City College* decision as a delaying tactic in an open-and-shut case of discrimination against disabled students. OCR #04-83-2006.

■ Junior and senior high school students in Pickens County, South Carolina are given a choice of co-educational or same sex physical education classes. If too few students sign up for the same-sex classes, those who chose co-ed classes are assigned on the basis of their sex to segregated P.E. classes. OCR investigated and found that this practice discriminated against both boys and girls on the basis of sex. It is a violation of Title IX.

But an Administrative Law Judge agreed with the school district that OCR had no authority to regulate P.E. classes because none of the $2 million in federal funds received by the Pickens County School District were earmarked for physical education. The investigation was completed long before the Supreme Court's ruling, when OCR's jurisdiction was clear. Now the *Grove City College* decision is being used by the school system as an obstacle to enforcement of the federal law banning sex discrimination in schools receiving federal funds. OCR #04-80-5030.

The Future After Grove City College: What We Can Expect

Unfortunately, these examples are just the tip of the iceberg. The potential for federally funded discrimination under *Grove City College* is virtually limitless. Already federal enforcement efforts have been severely restricted. Coverage that was comprehensive is now a legal patchwork. As a woman, a person of color, a disabled person or an older person moves through an institution, the degree of civil rights protection will wax and wane depending on the nature and extent of federal funding.

The following examples describe the limited reach of these civil rights laws in the wake of the Supreme Court's decision. They illustrate the discrimination that will illegal before the decision but could be legal today—as long as the Supreme Court ruling stands as the law of the land.

The Potential for Discrimination Under Title VI of the Civil Rights Act of 1964

- A college or university would still be required not to discriminate on the basis of race in student admissions, but once admitted, students would be protected from unequal treatment only in those departments or programs that have received a federal grant or that are housed in buildings built with federal construction loans.
- A city department of housing and recreation receiving federal assistance to build low-cost apartment houses could operate run-down playgrounds in Black neighhorhoods and well-equipped and well-maintained playgrounds in white neighborhoods. After *Grove City College*, this racial discrimination would not be covered by Title VI because there is no federal money spent directly on any of the department's playgrounds.
- A public high school receiving only federal vocational education funds could allow, under Title VI, racially separate science clubs, debate teams and glee clubs because these extracurricular programs and activities do not receive direct federal financial assistance.
- If a hospital has one maternity ward where none of the doctors accept Medicaid patients, the hospital could argue that that ward is not covered by Title VI and could exclude Black or Hispanic patients or provide inferior treatment to patients in that ward.

The Potential for Discrimination Under Title IX of the Education Amendments of 1972

- Colleges and universities could give preference to married men, to the exclusion of married women, in admissions to graduate teaching assistantships.
- A women's intercollegiate athletics program could be limited or abolished, while the men's program was maintained or expanded. Institutions could refuse to pay for travel, or could pay less for women athletes. Institutions would be free to offer women fewer coaching opportunities, to provide inferior equipment, facilities and uniforms, and to schedule the women's practice at the least desirable times.
- Only those few students in college programs receiving federal assistance would be protected against sexual harassment—and then only during the hours they were involved in the program. For example, discrimination in the university's financial aid office is prohibited when the institution receives student aid monies. Students standing *inside* the office are protected by federal law against sexual harassment; once they walk *outside* the door, the protection ends.
- Colleges and universities could provide better housing—and more of it—for men. They could require women, but not men, to live on campus. But men could be denied housing in the newest or most convenient dorms.
- Unless a class, program or department received money from the federal government, women could be excluded, or preference given to men for any reason. If a class were overcrowded, for instance, the professor could choose to admit all interested men first.

The Potential for Discrimination Under Section 504 of the Rehabilitation Act of 1973

- Airlines which use federally subsidized airports and federal air traffic controllers could segregate disabled people in waiting areas or within the airplane. They could restrict the seating of disabled persons to first class, refuse to seat blind or deaf passengers in rows next to exits, "bump" disabled people first on overcrowded planes, or allow disabled persons to fly only on certain flights.
- A state agency receiving federal funds could deny employment to a qualified disabled person in one of its state-run programs that does not directly receive federal funds, solely on the grounds of his or her disability.
- Agencies, organizations and institutions receiving federal funds could refuse to provide access to disabled persons in programs not directly receiving federal funds. For example, a licensing bureau that is funded solely by licensing fees, but is part of a state agency receiving federal funds, would be exempt from the responsibility to provide an interpreter for a deaf person wishing to take a licensing exam.

- Disabled students could be denied the opportunity to pursue certain occupations because individual classes or programs are not accessible. For example, a disabled student wishing to take a chemistry class required for entrance into medical school could be denied the opportunity to attend class because the chemistry laboratory is inaccessible, as long as the Chemistry Department receives no direct federal assistance.

The Potential for Discrimination Under the Age Discrimination Act of 1975

- A university with a college of Medicine or Law could deny admission to qualified applicants over a certain age on the grounds that an older person will have fewer years to practice the profession.
- A state rehabilitation service could give low priority to persons above a certain age or refuse to train persons above a certain age, on the grounds that they are harder to employ or less likely to benefit from job training.
- A university could limit fellowships in its graduate school program to persons under a certain age—for example, 30—on the grounds that the program is designed to encourage talented but inexperienced young persons.
- A university or college could deny campus housing to persons above a certain age, because they are "too old" to live in dorms with young people.
- A state health department could limit flu immunizations to the working-age population.

Conclusion

The impact of the *Grove City College v. Bell* decision is just beginning to be felt. For every example that comes to the public eye or that results in a discrimination charge, there are hundreds that go unreported and unnoticed except by those directly involved. The decision has sent a signal to recipients of federal funds that they *can* accept federal funds and they *can* discriminate.

Just one year after the *Grove City College* decision, it is clear that John Kennedy's dream of "simple justice" is far from a reality in towns and cities across America. The mounting evidence of new instances of civil rights abuse, now openly condoned by the federal government, indicates that America has given a green light to discrimination. The legacy of *Grove City College* must weigh on the conscience of this nation, an ever present reminder of the unfinished business we must complete if we are to create a just society.

About Title VI of the Civil Rights Act of 1964

"No person in the United States shall, on the ground of *race, color or national origin*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any *program or activity* receiving federal financial assistance."

On August 26, 1963, over 200,000 people, Black and white, joined the "March on Washington" to protest inequality in our society and to press for the passage of the Civil Rights Act of 1964. They demanded an end to maltreatment by local and state enforcement officials and more power for the Attorney General to act in cases where civil rights had been denied. The Senate, during debate on the Civil Rights Act, ended a filibuster on civil rights for the first time.

The Civil Rights Act of 1964 broke the back of Jim Crow in American life. It opened movie theaters, restaurants and other places of public accommodation. Employment discrimination against minorities and women in the private sector was banned under Title VII. And Title VI prohibited racial discrimination by recipients of federal financial assistance.

Title VI is the primary vehicle for desegregation of schools, hospitals, public systems of higher education, agriculutural extension services, social service agencies and public housing. The threat of loss of federal funds has been used primarily under Title VI—a total of 220 recipients have had federal funds terminated at some time between 1966 and 1982 by the Department of Health, Education and Welfare and the Department of Education for failure to comply with Title VI. Of the 220 recipients, only two remain ineligible for federal funds.

Progress Made Under Title VI

- Black Americans are no longer refused treatment at white-only hospitals, nursing homes and clinics.
- Schools in the South that were formerly segregated by law are now desegregated; in 1964, less than one percent of southern Black youngsters attended predominantly white schools. By 1980, 43 percent of these students were in predominantly white schools and only 23 percent were in schools with 90 to 100 percent minority student enrollment.
- States, counties and cities cannot discriminate against Black neighborhoods in the location and maintenance of roads.
- Racial assignment of Black and white teachers has been eliminated in virtually all schools, North and South.
- County extension services, 4-H clubs and rural electric cooperatives must be open to persons of all races.
- From 1970 to 1979, Black enrollment in postsecondary institutions increased 92 percent: Hispanic enrollment more than doubled. These figures compare with an 8.3 percent increase in white male post-secondary enrollment during the same time period.

About Title IX of the Education Amendments of 1972

"No person . . . shall, on the basis of *sex* be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any *education program or activity* receiving federal financial assistance . . ."

Title IX of the Education Amendments of 1972 was passed to ensure equal educational opportunities for women and girls at every educational level—from kindergarten through graduate school, including vocational and technical schools. Title IX also protects teachers and other employees in education.

Title IX has significantly improved the quality of life for countless women and girls. Title IX spurred the recent growth in the number of women doctors and lawyers. Under Title IX some women teachers have received higher salaries; and other women have won the battle against sexual harassment. Most women, and their school-age daughters, whether or not they realize it, have seen the benefits of Title IX in school sports programs.

Title IX does have some exceptions. Schools controlled by religious organizations are exempted from Title IX whenever compliance could be contrary to their religious beliefs, for example. University-based social fraternities and sororities, as well as clubs such as the Girl Scouts and Boy Scouts, also are exempt.

Progress Made Under Title IX

- Under Title IX, admissions policies which officially restricted the enrollment of women, particularly in professional schools, have been eliminated. Between 1972 and 1960, therefore, the number of women in medical school rose from 11 percent to 26 percent; in law school, from 10 percent to

34 percent; and in veterinary school, from 12 percent to 30 percent. The number of women awarded doctorates increased from 16 percent to 30 percent.

■ Opportunities for women and girls in sports were vastly expanded after the passage of Title IX. The number of girls playing high school sports has increased from seven percent to 35 percent, for example. Today, more than 10,000 women are attending college on athletic scholarships, a rarity before the passage of Title IX.

■ Title IX required school counselors to test and score male and female students in the same way, so that girls were not automatically counseled to become nurses while boys were encouraged to become doctors.

■ Title IX banned school policies which expelled pregnant students or prevented them from participating in school activities.

About the Age Discrimination Act of 1975

"... no person in the United States shall, on the basis of *age*, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any *program or activity* receiving federal financial assistance."

The Age Discrimination Act of 1975 bans discrimination on the basis of age in the delivery of services and benefits by recipients of federal financial assistance. The Act was motivated by Congressional belief that discriminatory policies and practices exist which prevent older persons from taking full advantage of federally-supported services and benefits.

The law called for the United States Commission on Civil Rights to conduct a study of federally assisted programs to determine the existence, nature and scope of age discrimination. The Commission found that "discrimination on the basis of age was widespread," with deprivation affecting persons within several age categories. Those age 65 and over were "consistently adversely affected."

The statute has a number of exemptions, including a program or activity that "reasonably" takes into account "age as a factor necessary to the normal operation" or "achievement of any statutory objective;" programs or activities that take into account reasonable factors other than age or where age is the statutory criterion for benefits and assistance. Employment practices and labor-management joint apprenticeship training programs also are exempted.

The implementing regulation for the Age Discrimination Act did not become effective until January 27, 1983, so that full implementation of the law has just begun. Even so, there were 76 complaints filed in fiscal year 1981 under the Age Discrimination Act, 144 in 1982 and 133 in 1983. The majority of the complaints filed under the Act involved education—for the most part denials of admissions to colleges and universities. Other areas cited included health services, housing, denial of food stamps, and access to rehabilitation programs. The Act establishes important civil rights for older Americans and has the potential for far-reaching positive impact.

About Section 504 of the Rehabilitation Act of 1973

"No otherwise qualified handicapped individual—shall, solely by reason of his *handicap*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any *program or activity* receiving federal financial assistance."

Section 504 of the Rehabilitation Act of 1973 prohibits recipients of federal assistance from discriminating against disabled people. The law covers physical—including orthopedic, neurological, or sensory disabilities, as well as mental disabilities, including retardation, emotional illness, and learning disabilities. Also covered are such hidden disabilities as cancer, epilepsy, respiratory and cardiovascular conditions. Areas covered by Section 504 include:

■ *Education*—Disabled people have made great strides in education in the last 10 years. For example, one university—Ohio State University—has increased its enrollment of disabled students from 32 to 662 since the enactment of Section 504.

■ *Employment*—Section 504 prohibits the discriminatory effects of pre-employment inquiries, hiring criteria, and below-standard wages, and ensures equal treatment in employee benefits, promotions, and vocational rehabilitation programs. Disabled people are just beginning to feel the positive effects of this law but still remain the most unemployed and underpaid group of people in the country.

■ *Accessibility*—Section 504 guarantees access (by means of ramps, elevators, parking spaces, appropriate warning signs for deaf and blind people, for instance) to government buildings, schools, shopping centers, public housing, public monuments, sidewalks and streets.

■ *Housing*—Section 504 prohibits such discrimination as denial of access to public housing, zoning obstacles and overly protective fire codes.

■ *Medical Services*—Section 504 guarantees protection against denial of life-saving treatment of disabled infants, medical experimentation, communication barriers to treatment, and involuntary sterilization.

■ *Other areas of Section 504 coverage include:*

1. Voting rights—requiring accessible polling places and assistance in marking ballots in federal elections.
2. Transportation—requiring airline accessibility and access to public transit systems.
3. Insurance
4. Social Services
5. Recreational programs
6. Criminal justice systems—requiring availability of interpreters, accessible toilet facilities, and restriction of arbitrary incarceration of mentally retarded people.
7. Access to mass media—including captioning of television programs, and braille and tape versions of publications.

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Ms. GOLDSMITH. I thank you very much for the opportunity to come and speak before the committee this morning in support of the Civil Rights Restoration Act.

I am Judy Goldsmith, president of the National Organization for Women, the Nation's largest and oldest feminist organization, with a quarter of a million members.

The Civil Rights Restoration Act is urgently needed to correct the devastating Supreme Court decision in *Grove City College* v. *Bell.* It has now been over a year since the Supreme Court ruled that a college receiving Federal funds only for student financial aid is required to comply with title IX, but only in its financial aid program.

The Court's decision legalized school by school, department by department, and program by program, discrimination against women and girls in federally funded educational institutions. This ruling, in essence, legitimizes Government subsidy of discrimination.

The Court's ruling mandated the narrow interpretation of title IX of the Education Amendments of 1972 and has much larger ramifications, And we share the concerns of our colleagues about the other affected statutes, because protection afforded under these statutes to minorities, the elderly, and the handicapped are also jeopardized by the *Grove City* ruling.

In the past year, since the Court's ruling left millions of Americans virtually unprotected, the lives of real people have been changed as a result of the Court's decision, and Congress' inability to enact a legislative remedy.

Although all of the above-mentioned populations are equally threatened, I will focus my testimony, as a representative of an organization that fought for title IX, on the effects of the Court's ruling on women and girls.

As an example, since *Grove City,* a young woman at Northeastern University filed a complaint under title IX. She charged that the university had not taken action on a sexual harassment complaint she had filed, and that there was no grievance procedure at the university, although one was required by title IX. Under title IX, prior to *Grove City,* the Office for Civil Rights need only to determine that the university received Federal funds.

Since the *Grove City* decision, the Office for Civil Rights has to determine whether the Federal funds go to the program in which discrimination is charged. Although the university had received over $2 million under the Federal College Housing Loan Program to renovate student housing, in addition to approximately $10 million in student aid for the academic year 1983–84, the sexual harassment had occurred in the building of the economic department, which had not been built or renovated with Federal funds and the charges, therefore, could not be pursued.

If the alleged harassment had taken place in the student dorm, which was built with Federal loans, the Office for Civil Rights would have been able to investigate. The education department has placed this case on policy hold.

This is only one example of the many instances in discrimination previously covered under the civil rights statute, such as title IX.

Complaints previously investigated by the Office of Civil Rights are no longer being pursued, in light of the *Grove City* ruling.

At least 63 cases in the Department of Education, 44 of them title IX cases, have been closed, limited or suspended. And it has only been a year.

Title IX is a cornerstone of economic equality for women, yet as recently as 10 years ago, many educational opportunities were considered off-limits to women, either directly through policy, or through more subtle forms of discrimination. The discrimination that barred women from professional schools, or the career of their choice cheated many young women out of achieving their full potential, and cheated our country out of the talents and skills of half our population. Women who lacked sufficient funds, but wished to go to college, were not even considered for athletic scholarships before title IX, even if they excelled in sports.

But thanks to title IX, there are currently more than 10,000 young women now attending college on athletic scholarships, including many who would not have had financial means to attend without that assistance. The number of women in college sports has increased by 250 percent in the last decade. Perhaps the most dramatic manifestation of the strides in athletic advancement for women was the performance of young American women at the Olympics last year.

Several of these women have acknowledged that title IX was a major factor in making their success possible. Title IX has also encouraged many women to pursue nontraditional courses of study, the percentage of professional degrees conferred on women rose dramatically during the first decade of title IX. The percentage of law degrees earned by women increased from 9 percent to 32 percent; the percentage of medical degrees from 9 percent to 25 percent. And the percentage of Ph.D.'s increased from 17 to 32 percent.

As the result of educational opportunities, increasing numbers of women are now on career paths that had been previously thought of as the exclusive territory of males.

Yet the modest gains we have made, and good as they are, they are only a beginning, were seriously threatened by the Court's decision in February 1984, and by Congress' failure to pass legislation last year restoring those rights.

Coverage that was once comprehensive is now a legal patchwork. The potential for federally subsidized discrimination is virtually boundless, because the Court's decision has sent out a signal that it is once again legal to use taxpayer funds to discriminate against those taxpayers who happen to be women, minorities, aged or physically challenged.

It signals a return to the time many of us thought we had left forever.

The *Grove City* decision and its complete and welcomed acceptance by the present administration has made it clear that some in this Nation still believe that discrimination is acceptable. We do not. Nor do we believe that the Court's ruling affected only a small portion of our society, as this administration claims. We are not taken in by the dividing and conquer strategy. Women share the concerns of all the constituencies represented here today. We are a part of each of the constituencies, as well, since women come in all colors, all ages, and are subject to the same physical and mental challenges as men.

To settle for something less than total restoration of the protections of all four statutes is simply unacceptable. We are here today to say that we are asking only for a restoration of our rights. We are asking only for simple justice.

The legislation before us today accomplishes that, and we urge its speedy passage.

The CHAIRMAN. Thank you, Ms. Goldsmith.

The next witness is Dr. Arthur Flemming, chairman of the Citizens Commission on Civil Rights.

Dr. Flemming.

STATEMENT OF DR. ARTHUR FLEMMING, CHAIRMAN, CITIZENS COMMISSION ON CIVIL RIGHTS

Dr. FLEMMING. Mr. Chairman, and members of the committees, first of all, may I express my deep appreciation for the opportunity of appearing before you. May I also express my appreciation for the opportunity of being on a panel with two our outstanding national leaders in the field of civil rights. I feel that we are indebted to both of them for endeavoring to keep our Nation's feet to the fire as we strive to achieve the objectives that many of us feel must be achieved by our Nation in this particular area. And I feel indebted to them for their leadership.

I appreciate the opportunity of testifying on this proposed legislation, legislation, which if enacted into law, can mean so much to the victims of racism, sexism, ageism, and discrimination based on physical and mental handicaps.

The Civil Rights Restoration Act of 1985, H.R. 700, deals in a realistic manner with the greatest single obstacle to achieving our national goal of equal opportunity, namely, institutional discrimination. The document "In Justice Under the Law," prepared by very competent representatives of five major civil rights groups, provides us with an excellent analysis of the impact of the *Grove City* decision.

And I assume at some point this document will be presented to the committee, and included in the record of these hearings.

I propose to draw on my experience as an educational administrator and discuss with the committee the impact of Federal grants for one part of an educational institution, on the entire institution. And the manner in which institutional discrimination makes it impossible to combat discrimination effectively in one part of an institution and ignore it in the rest of the institution.

I want to stress, however, that although I am drawing on my experiences in the area of higher education, I believe the conclusions I have reached are applicable to all other institutions in our society.

A Federal grant to one program or activity of an educational institution benefits the entire institution.

When I served as the president of the University of Oregon, we applied for, and received substantial support for strengthening our science program from the National Science Foundation. The entire university benefited from those grants.

If the Federal support had not been provided, needs of students would have required us to move at a much slower pace in the same direction with State funds, some of which would have been diverted from other programs. Although State funds were mingled with Federal funds, in order to move toward our objective in the area of the sciences, the existence of the Federal funds meant that some State funds that otherwise would have been used in the science areas, were available to strengthen other programs.

A portion of the Federal grant was used to help defray overhead costs. The opportunity to develop a superior program in the science areas turned the spotlight on the university in such a manner as to influence in a positive manner its relationships with the legislature, its ability to recruit outstanding scholars, its student recruitment program, and its support from the private sector.

If the civil rights laws in a situation of this kind were applicable only to the science department, we would have a clear case of using Federal funds which strengthen the entire institution, to encourage and subsidize institutional discrimination, except in the area of the sciences.

Case histories of injustice under the law make it clear that this has already taken place. The number of such case histories will accelerate the longer *Grove City* continues to be the law of the land.

Federal grants to any program or activity in an educational institution, or any other institution in our society, are grants in reality to the entire institution. The grants contribute to the welfare of the entire institution. Federal taxpayers have the right to expect that the constitutional and moral imperatives that are incorporated in our laws against discrimination will be implemented throughout the entire institution.

It is unrealistic to expect an educational institution to combat discrimination effectively in one program or activity, and ignore it in the rest of the institution. Institutional discrimination permeates the life of the entire institution.

And I have included in my prepared statement some quotes from a U.S. Commission on Civil Rights report which we issued in November 1981, in which we discussed dismantling the process of discrimination. And in those quotations we describe the process of institutional discrimination.

And as I indicated, it is a description of the way in which institutional discrimination works in educational institutions, as well as in the other institutions in our society. Antidiscrimination laws, such as the ones embodied in the proposed legislation we are discussing, when implemented, strike at the root causes of institutional discrimination. Their implementation disturb the status quo.

There are always individuals and groups within the institutions that have a stake in the status quo, and they will do everything they can to see to it that it is preserved. That is why government must intervene in the way in which it intervened under the four laws that are involved in the legislation under consideration.

The *Grove City* decision clearly gives aid and comfort to those who want to maintain, rather than eliminate institutional discrimination.

Let's assume that we are dealing with a situation where X department in an educational institution is receiving Federal funds. It would be virtually impossible to implement an equal opportunity admission policy solely for X department. Normally, overall admission policies are established for the entire institution. If the overall policy reflects an indifferent lukewarm, or hostile attitude toward equal opportunity, it would be very difficult to expected an isolated department dependent on institutional resources to develop and implement an equal opportunity admission policy.

Architectural barriers might be removed for X department, but if they remained in place throughout the rest of the institution, very few handicapped students would be able to attend the institution. As a result, the removal of barriers in X department would have very little, if any, practical effect.

Institutional discrimination would continue, normally for alleged physical reasons, but it would continue, and it would continue to be in the driver's seat, even for X department. X deparment could do very little, if anything, to provide its students with the opportunity of participating in cocurricular activities open to persons without regard to sex, race, creed, national origin, age, or handicap.

This is an area where institutional discrimination has been rampant, in elementary, secondary, and post-secondary education. The defenders of the status quo normally justify their position on fiscal grounds.

The forward movement we have experienced in this area would rapidly be replaced by a backward movement, if *Grove City* remains in effect.

X department could do very little about opening up opportunities for older persons, preparing for second careers, if the rest of the institution continued to practice agism.

In brief, Federal grants to the department of an institution that brings benefit to the entire institution must be administered in such a manner that all who relate to the life of the institution, not just those associated with a particular department, benefit from our civil rights laws.

My comments grow out of my experiences with educational institutions, but as I stated at the beginning of my testimony, I believe they could be applied to all institutions in our society. I know from my own experiences that they can be applied to governmental departments and agencies.

My experiences as Chairman of the U.S. Commission on Civil Rights led me to the conclusion that it will be impossible for us to achieve our moral and constitutional goals in the area of civil rights, unless we come to grips with institutional discrimination.

The *Grove City* decision represented a serious setback, it said to the practitioners of institutional discrimination we can continue to maintain the status quo, provided that we live up to the letter of the law in those areas that receive Federal funds. We know that doing so will have very little effect on those areas and we can keep in tact our overall policies of discrimination.

If the Civil Rights Restoration Act of 1985 is passed, we will be back, Mr. Chairman, and members of the committee, on the right track. It will provide workers in the field of civil rights with a shot in the arm. It will provide the victims of discrimination with a sign of hope.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Dr. Flemming.

[Prepared statement of Arthur S. Flemming follows:]

PREPARED STATEMENT OF ARTHUR S. FLEMMING, CHAIRMAN, CITIZENS' COMMISSION ON CIVIL RIGHTS

I. INTRODUCTION

A. I appreciate the opportunity of testifying on this proposed legislation—legislation which if enacted into law can mean so much to the victims of racism, sexism, ageism and discrimination based on physical and mental handicaps.

B. The Civil Rights Restoration Act of 1985 deals in a realistic manner with the greatest single obstacle to achieving our national goal of equal opportunity, namely, institutional discrimination.

C. The document "Injustice Under the Law" prepared by very competent representatives of five major civil rights groups provides us with an excellent analysis of the impact of the Grove City decision.

D. I propose to draw on my experience in educational administration and discuss with the Committee the impact of Federal grants to one part of an educational institution on the entire institution and the manner in which institutional discrimination makes it impossible to combat discrimination effectively in one part of an institution and ignore it in the rest of the institution.

I want to stress, however, that although I am drawing on my experiences in the area of higher education I believe the conclusions I have reached are applicable to all other institutions in our society. As far as governmental institutions are concerned I can also draw on my experiences in underlining the conclusions.

II. BODY

A. A Federal grant to one program or activity of an educational institution benefits the entire institution

1. When I served as President of the University of Oregon we applied for and received substantial support for strengthening our science program from the National Science Foundation.

2. The entire University benefited from those grants.

   a. If the Federal support had not been provided needs of students would have required us to move—at a much slower pace—in the same direction with State funds some of which would have been diverted from other programs.

   b. Although State funds were mingled with Federal funds in order to move toward our objectives in the area of the sciences, the existence of the Federal funds meant that some State funds that otherwise would have been used in the science area were available to strengthen other programs.

   c. A portion of the Federal grant was used to help defray overhead costs.

   d. The opportunity to develop a superior program in the science areas turned the spotlight on the University in such a manner as to influence in a positive manner its relationships with the legislature, its ability to recruit outstanding scholars, its student recruitment program and its support from the private sector.

3. If the civil rights laws in a situation of this kind were applicable only to the science departments we would have a clear case of using Federal funds which strengthen the entire institution to encourage and subsidize institutional discrimination—except in the area of the sciences.

   a. Case histories in "Injustice Under the Law" makes it clear that this is already taking place.

   b. The number of such cases histories will accelerate the longer Grove City continue to be the law of the land.

4. Federal grants to any program or activity in an educational institution, or any other institution in our society, are grants in reality to the entire instituiton.

   a. The grants contribute to the welfare of the entire institution.

   b. Federal taxpayers have the right to expect that the constitutional and moral imperatives that are incorporated in our laws against discrimination will be implemented throughout the entire institution.

B. It is unrealistic to expect an educational institution to combat discrimination effectively in one program or activity and ignore it in the rest of the institution

1. Institutional discrimination permeates the life of the entire institution.

a. The U.S. Commission Civil Rights in a report which we issued in November, 1981 in which we discussed dismantling the process of discrimination said: "The Commission views discrimination against minorities and women as processes that will continue unless systematically dismantled. Today's discriminatory processes originated in our history of inequality, which was based on philosophies of white and male supremacy. These processes became self-sustaining as the prejudiced attitudes and behaviors of individuals were built into the operations of organizations and their supporting social structures (such as education, employment, housing, and government). These built-in mechanisms reinforce existing discrimination and breed new unfair practices or damaging stereotypes. Such discrimination then perpetuates the inequalities that set the processes in motion in the first place.

"Both conscious and unconscious forms of prejudice can propel discriminatory processes. But discrimination is more than individual expressions of bias based on irrational ideas of racial, ethnic, or gender superiority. When discrimination is widespread and entrenched, it becomes a self-regenerating process capable of converting what appear to be neutral acts into further discrimination. These activities, separately and together, routinely confer privileges and advantages upon the dominant group, while imposing penalties and disadvantages upon minorities and women."

b. This is a description of the way in which institutional discrimination works—in educational institutions as well as in the other institutions in our society.

c. Anti-discrimination laws, such as the ones embodied in the proposed legislation we are discussing, when implemented strike at the root causes of institutional discrimination.

d. Their implementation disturbs the status quo.

e. There are always individuals and groups within the institution that have a stake in the status quo and they will do everything they can to see that it is preserved.

f. That is why Government must intervene in the way in which it intervened under the four laws that are involved in the legislation under consideration.

2. The Grove City decision clearly gives aid and comfort to those who want to maintain rather than eliminate institutional discrimination.

3. Let us assume that we are dealing with a situation where "X" department in an educational institution is receiving Federal funds.

a. It would be virtually impossible to implement an open admission policy solely for "X" department.

(1) Normally over-all admissions policies are established for the entire institution.

(2) If the over-all policies reflect an indifferent, or lukewarm or hostile attitude toward equal opportunity it would be very difficult to expect an isolated department—dependent on institutional resources—to develop and implement an effective open admissions policy.

b. Architectural barriers might be removed for "X" department but if they remained in place throughout the institution very few handicapped students would be able to attend the institution.

(1) As a result the removal of barriers in "X" department would have very little, if any, practical effect.

(2) Institutional discrimination would continue—allegedly for fiscal reasons—to be in the driver's seat even for "X" department.

c. "X" department could do very little, if anything, to provide its students with the opportunity of participating in co-curricular activities open to persons without regard to sex, race, creed, national origin, age or handicaps.

(1) This is an area where institutional discrimination has been rampant.

(2) The defenders of the status quo normally justify their position on fiscal grounds.

(3) The forward movement we have experienced in this area would rapidly be replaced by a backward movement if Grove City remains in effect.

d. "X" department could do very little about opening up opportunities for older persons preparing for second careers if the rest of the institution continues to practice ageism.

C. In brief, Federal grants to the department of an institution that bring benefits to the entire institution must be administered in such a manner that all who relate to the life of the institution—not just those associated with a department—benefit from our Civil Rights laws.

III. CONCLUSION

A. My comments grow out of my experiences with educational institutions but as I stated at the beginning of my testimony I believe they can be applied to all institutions in our society.

B. My experiences as Chairman of the U.S. Commission on Civil Rights led me to the conclusion that it will be impossible for us to achieve our moral and constitutional goals in the area of civil rights unless we come to grips with institutional discrimination.

C. The Grove City decision represented a serious setback.

1. It said to the practitioners of institutional discrimination, "We can continue to maintain the status quo provided that we live up to the letter of the law in those areas that receive Federal funds. We know that doing so will have very little effect on those areas and we can keep intact our over-all policies of discrimination."

D. If the Civil Rights Restoration Act of 1985 is passed we will be back on the right track.

1. It will provide workers in the field of civil rights with a shot in the arm.
2. It will provide the victims of discrimination with a sign of hope.

Prepared Statement of the Citizens' Commission on Civil Rights

The Citizens' Commission on Civil Rights strongly endorses H.R. 700 and S. 431, identical bills entitled the Civil Rights Restoration Act of 1985, and urges their passage in this session of Congress.

The bills, introduced under the bipartisan leadership of Sentors Kennedy and Weicker and Representatives Hawkins, Edwards, Fish and many others, are needed to restore broad coverage to four Federal statutes designed to promote equality of opportunity by preventing discrimination in the use of Federal funds. The legislation was made necessary by the Supreme Court's Federal, 1984 decision in the *Grove City* case in which a majority held that the term "program or activity" in one statute meant that the discriminatory acts of a private college which benefited from federally-guaranteed student loans or grants could be dealt with only if the discrimination occured in the college's financial aid office. Although the *Grove City* decision dealt only with title IX, which is designed to prevent sex discrimination in federally-subsidized education programs, it is abundantly clear that the same principle of restrictive coverage is being applied to three other statutes barring discrimination on the bases of race, national origin, handicap and age in similar situations.

As a group of Federal officials who have borne responsibility for administrering and analyzing Federal civil rights laws, we know how important these four laws have been in eliminating discriminatory practices that cannot withstand scrutiny. Beginning in 1964, when the enactment of title VI brought important progress in eliminating racial segregation in public schools and hopsitals and extending until 1984 when the fruits of efforts to end discrimination against women in college athletic programs were seen in the Olympic games, these laws have proved invaluable in securing equal opportunity.

As former officials, we know too that sensible adminstration of the law will be hampered by new bureaucratic requirements of establishing links between Federal funds and the particular offices of operations where discrimination is alleged. Yet searches for such a nexus, with the attendant burdens on regulators alike, are impelled by the *Grove City* declision.

The corrective measures introduced in the House and Senate provide a straightforward solution. The bills define as a "program or activity" all of the operations of state and local governmental departments and agencies, universities and higher education systems, corporations and other businesss organizations that receive Federal funds in any of their parts. The coverage of other types of entities will be governed by similar principles. At the same time, the bills assure that fund termination, at last resort sanction, will continue to be narrower than the coverage provisions of the law. This makes sense because injunctive remedies which require nondiscrimination whouls benefit the maximum number of people, while fund termination which withdraws benefits from citizens should be pinpointed to assure that "innocent beneficiaries" do not suffer harm.

The arguments against H.R. 700 and S. 431, that they entail undue Federal regualtion and involve rights of property or privacy, are very reminiscent of the claims made by those who opposed the statutes in the first place. They are not persuasive. The experience of two decades has shown that only in rare circumstances, e.g., cases involving religious freedom, is it appropriate to exempt institutions from the requirements of nondiscrimination laws and that even these exemptions should be narrowly drawn. Experience has shown too, that the extension of equal opportunity requirements to the recipients of Federal funds is of benefit not just to victims of discrimination but to the institutions themselves and society at large. In the words of President Kennedy in his call for the passage of title VI:

"Simple justice requires that public funds to which taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination."

Enactment of H.R. 700 and S. 431 will renew the bipartisan commitment that has existed for more than two decades to remove barriers of discrimination that have prevented so many citizens from achieving their full potential. In so acting, Congress will help us to become a stronger nation.

The CHAIRMAN. Let the Chair ask you this question, on certain issues you raised. There seems to be great concern about discrimination in educational activities, and a greater support for doing something about eradicating this type of discrimination.

Let us assume, however, that the *Grove City* reasoning is allowed to stand, and that we proceed to limit the remedy being made available to only educational activities. Would it be possible then to—well, let's take a hypothetical case. A private hospital or a nursing home which receives only Federal assistance, let us say in the emergency room, denies admittance in the cardiac room based on that person's color, or let's say because they do not desire to make arrangements for the wheelchair, or they do not want to have elderly people of greater risk in the cardiac room, would they be allowed to do this, under the *Grove City* reasoning?

Mr. FLEMMING. Mr. Chairman, I am fearful of the fact that they would be allowed to do it. And I know that your question is based on the provisions and what you have referred to as the Dole bill.

Personally, I am opposed to that bill, I do not think it goes far enough by any means. I think that H.R. 700 is the kind of legislation that should be enacted by the Congress. The *Grove City* decision, it is true, was an interpretation of title IX. But as we all know, the language in title IX was copied from the language in the Civil Rights Act of 1964, title VI.

And we also know that the Age Discrimination Act used that same language, as did 504 of the Handicap Act.

Therefore, there is a cloud over all of those acts, and the only way in which that cloud can be removed is by the Congress of the United States. And it seems to me that if the Congress of the United States is going to set the record straight, as far as title IX is concerned, it should certainly set the record straight as far as the other acts are concerned, otherwise we are going to have a lot of litigation, and we are just going to slow down this battle against institutional discrimination.

Furthermore, the Dole bill, as it is worded, seems to incorporate a definition of an educational institution which would restrict it to departments, and put us right back to where we have been.

So, it is not a satisfactory bill, as far as educational institutions are concerned, and it is certainly not a satisfactory bill because it does not deal in an adequate, or a satisfactory manner with the issue that confronts us in connection with the other legislation.

And as I indicated in my testimony, I was drawing on my experience in the field of educational administration, but I said there applies to any institution in our society. When these grants are made to a hospital, they may be made to a particular unit within the hospital, but they are really made for the institution, and it is the institution that benefits. And of course the institution should be required to adhere to our civil rights laws.

It doesn't make any sense at all to say that you can just focus on a particular program within an institution, and try to enforce the civil rights laws for that particular program. The grant is a grant that benefits the entire institution, and the entire institution should be held to accountability as far as the civil rights laws are concerned.

The CHAIRMAN. Thank you, Dr. Flemming.

Mr. JEFFORDS. Thank you, Mr. Chairman.

I want to thank all for very wonderful statements. Dr. Flemming, it is always a pleasure to listen to you, I have several times and I must say that you are the prime example in this country of why we must end age discrimination.

Mr. FLEMMING. Thank you, sir.

Mr. JEFFORDS. I have one brief question and then I am going to defer the rest of my time to Mr. Bartlett.

I take it, first of all I am going to ask if you both, Ms. Goldsmith and Mr. Hooks, agree with Mr. Flemming's statement that he just made, just so the record is clear on that.

And, second, my question is, We have attempted here to restore the situation to where we believe it was before *Grove City*. Do you believe that this bill does accomplish that purpose?

Ms. GOLDSMITH. The Civil Rights Restoration Act, the one that is before us?

Mr. JEFFORDS. Yes; I believe it will take us back to the time before *Grove City*, to the protections that were included at that time for the four statutes.

Mr. HOOKS. I do, also, yes.

Mr. FLEMMING. I do, too.

Mr. JEFFORDS. All three of you agree. Then, would you also agree that the claims that it goes well beyond restoration are not appropriate or accurate, would you agree that those charges are not correct?

Mr. HOOKS. Most emphatically, I think that the charges that have been made that the H.R. 700 provisions will take us far beyond pre-*Grove City*—the pre-*Grove City* law, that those statements are absolutely incorrect. And rather inflammatory, quite frankly, of what I have seen of them so far.

Mr. JEFFORDS. Ms. Goldsmith?

Ms. GOLDSMITH. I think that the charges are really a scare tactic to threaten with the specter of governmental intrusion. There is, to the best of my knowledge, and the understanding of this legislation that is before us, it is indeed restoration. It does, indeed, restore the coverage of protections that we had before *Grove City*.

It does not in any way go beyond that.

Mr. JEFFORDS. Dr. Flemming.

Mr. FLEMMING. I have great respect for those who have worked together on helping draft this particular legislation. I know that their objective was not to go beyond the situation that existed before *Grove City*. And I believe that they have accomplished that particular objective. And I do not treat seriously at all the charges that they have gone beyond it.

Mr. JEFFORDS. Thank you.

I yield the rest of my time to the gentleman from Texas.

Mr. BARTLETT. I thank the gentleman for yielding, and I apologize to the committee for asking this one question a little bit out of order. I have the greatest respect for these three individuals, and particularly for Mr. Hooks. I worked with you and your organization on some redistricting matters in Texas in which we were unsuccessful, but the battle is not over yet.

I would ask each of the three of you whether you believe that these four discrimination statutes: age, race, sex, and handicap should apply to Congress as an institution, and whether we should take action to prevent Congress from being exempt from these four statutes?

Mr. FLEMMING. I will be glad to lead on that. My answer is yes. When I was Chairman of the Civil Rights Commission, we received a request, in this case from the Senate side, to consider the applicability of title VII, for example, of the Civil Rights Act of 1964, to the legislative branch.

We conducted studies, we prepared a report which contained specific recommendations as to how that could be accomplished by the Congress. And I think those were sound recommendations, and I would hope that some day they would see the light of day, and that the legislative branch would implement.

Mr. BARTLETT. Thank you, Dr. Flemming.

Ms. GOLDSMITH. I think that the integrity of our national commitment to ending discrimination would suggest that Congress not be exempted from the civil rights laws.

Mr. BARTLETT. Thank you.

Mr. HOOKS. I think that you said they should be included?

Ms. GOLDSMITH. Yes.

Mr. HOOKS. Not exempt?

Ms. GOLDSMITH. Right.

Mr. HOOKS. I agree.

Mr. BARTLETT. I thank the three of you for your candor, and for your help. This may not be the day, but this may be the year, and I may be calling on you for your help later on.

Thank you.

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

I like to see and hear my friends here before me, and it is always a pleasure to see you three, especially Dr. Benjamin Hooks, who has a church in Detroit, a national office in New York, and goodness knows what else in between. His energy level across the years as a civil rights leader, himself a judge and a former chairman of the FCC, has left him in good share to continue his duty.

I was very happy to hear you, Dr. Hooks, include in your statement this brief summary of our civil rights struggle. You know, a lot of people forget it, and some people assume it. I only wished you could have gone further to describe what has happened over the last several years, because this movement of retrenchment, of cutting back, of losing gains, or erosion of progress is really a very important part of the atmosphere that brings us here.

I am not even sure if the Supreme Court would have made this mistake of judgment at the insistence of the Department of Justice, by the way, had it not been for this kind of environment.

So, I would like you to spend a moment or two, to just describe what this climate is that you see us in now.

Mr. HOOKS. I think we do have some very serious problems. The facts are very clear that: No. 1, there was a long history of slavery of actual legal redress against blacks who tried to advance. And then we had this brief period of clear sunlight, beginning in the early 1960's, and the civil rights revolutions of the 1950's, and so forth.

And it is undeniable that a great deal of progress was made.

The thing that is amazing to me, in light of the long history of absolute discrimination, the brief period when gains have been made, and with so much left to be done, that decisions have been made by the Commission, apparently which Dr. Flemming so ably headed, and which was the voice of civil rights, that now everything has been accomplished that needs to be accomplished in this field, and in fact, we can dismantle the remedies, and I think the Justice Department is now involved in, I think, 46 cases, to roll back consent decrees that have been entered in the past, which protected the rights of those disadvantaged or protected individuals that the civil rights laws were intended to cover.

I think these things are very ominous, and I think that when one hears these statements being made by the agencies, the Assistant Attorney General for Civil Rights and the U.S. Commission on Civil Rights, the chairperson and staff directors of various agencies, and when I look at some black people who are there because of civil rights laws, who now deny that they are needed, it is very frightening and ominous. And it reminds me of the period succeeding 1879, when rights were painfully gained and were eroded.

The NAACP, along with its other allies, and with the Congress, and others who will stand with us and are determined that this will not happen, and just finally, today, Thursday, in Montgomery, AL, many of the veterans of the civil rights movement are reenacting the great drama of 20 years ago, of the march from Selma to Montgomery, the bloody Sunday of March 7, and the subsequent successful march, which many people believe contributed greatly to the passage of the Voting Rights Act, which has I think, forever altered the political landscape.

And were I not here testifying on this very important bill, I, along with many members of this committee, would be in Montgomery. And it is strange that the same Governor who presided 20 years ago, is presiding today, but apparently is a changed man. And the atmosphere is different.

We are reminded that there are some roll backs, and we must be viligent that it should not happen, in order that the Nation might move forward to greatness.

Mr. CONYERS. Thank you for that excellent summary.

Ms. Goldsmith, did you have any reflections in this area?

Ms. GOLDSMITH. I think the word ominous is an appropriate word. I am very much troubled by the fact that we appear to have, as a nation, put on rose-colored glasses and decided that everything is fine now.

But in so doing, there are some bitter realities that are not being recognized. And I think that we ignore their existence, only at our peril. I think the economic disadvantaged suffered over the last several years by the black community cannot be ignored. The fact that, on average, black families have lost $2,000 family income. I think the fact that women continue to be 2 out of 3 adults living in poverty and the bad situation is not getting better, it is getting worse.

The fact that 22 percent of the children, our children, in this country live in poverty, nearly 1 out of 4, and most of those, heavily predominating our children are minority children and children of women, single heads of households, are all danger signs that we are not adequately recognizing as a nation. And that if we do not take some steps—and one of the most important steps to change those realities would be the passage of H.R. 700, that we will pay a price down the road.

Mr. CONYERS. Thank you so much.

Dr. Flemming.

Mr. FLEMMING. I certainly concur with the comments of my two colleagues. I am deeply concerned, for example, about what I feel is an organized effort to pull the rug right out from under the affirmative action programs in the area of equal employment.

And I hope that the Congress, in its oversight capacity, will probe this development that is taking place in our midst.

And as some members of the committee know, I am concerned, not only about eroding laws and policies that seek to establish the right of access, for example, to jobs and the housing, and education, but I am also concerned about the movement in the direction of the Federal Government moving out of the area of providing genuine opportunities to exercise those rights, whether it is in the field of employment, or the field of education, or the field of housing.

And this idea, you know, that we have made so much progress that we can let up on this area doesn't make sense at all. The Citizens Commission on Civil Rights that I chair, has been holding hearings on voter registration growing out of the experiences in the 1984 election. We held 2 days of hearings on the situation in the Northeast in New York. We held 2 days of hearings on the situation in the South and Southeast in Atlanta.

And I can tell you that I, and my colleagues, have been very much impressed with the fact that the power that has been vested in registering in State after State is still being exercised in such a manner as to deny many, many people the opportunity to register, and the opportunity to vote.

We have permitted a position to remain in the picture, as far as our Nation is concerned where the incumbents are not accountable to anybody after they are appointed, they are free to respond to pressures, they are free to respond to their prejudices. And as a result, minorities in one situation after another, are not being given a genuine opportunity to register and to vote.

And I cite that as just one illustration of unfinished business in the whole voting rights area.

The CHAIRMAN. The Chair recognizes that there is a vote pending in the House.

Our distinguished colleague, Mr. Coelho, is seated in the audience, and if we can maintain at least two members for a quorum, the Chair will add him to this panel so that we may accommodate his time constraints.

I understand that his statement is very brief, and with apologies to the other witnesses, may I deviate long enough to have Mr. Coelho make his statement before the committee.

STATEMENT OF HON. TONY COELHO, MEMBER OF CONGRESS, CALIFORNIA

Mr. COELHO. Thank you, Mr. Chairman.

I appreciate the opportunity to appear here this morning, particularly with the distinguished panel that you have here. I support and endorse their statements and their positions.

I think it is important that we also recognize the problems of the disabled. And I am here today representing that point of view. I do that, Mr. Chairman, not as one who is only interested in the disabled from a political point of view, I do that as someone who is interested as a disabled person, in that I have epilepsy, and I know the discrimination that has occurred, and I know the way that many of us in the disabled movement have been treated, paternalistic, and it becomes one of our major obstacles in regards to economic and social advancement.

And I think it is important, Mr. Chairman, that this legislation be adopted. And I want you to know that in this particular session of Congress, if you intend to do something with it, this will become the highest priority on my list to do something about.

I know that there are many people in this country who still feel there is a job to be done. I am one of those who strongly feels that in all the areas that have been represented on this panel.

I would like to make my full statement a part of the record, and I just want to, again, pledge to you and the other members of this committee, my very, very strong support for your efforts in this regard.

The CHAIRMAN. Without objection, the statement will be entered into the record.

[Prepared statement of Hon. Tony Coelho follows:]

PREPARED STATEMENT OF HON. TONY COELHO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I am addressing you today on behalf of the Civil Rights Restoration Act of 1985. This legislation, sponsored by 170 of my colleagues, will restore the foundations of our four major civil rights statutes and clarify Congress' intent that programs and activities receiving Federal assistance do not discriminate against any segment of society.

On the same day the Supreme Court handed down its *Grove City* decision, disabled people won a major victory in *Conrail* v. *Darrone*. The Supreme Court unanimously ruled that Section 504 of the Rehabilitation Act covered employment discrimination. The victory was tempered, however, with the same narrow application of program or activity used in the *Grove City* decision, thus setting severe limitations on the protections provided by Section 504 in employment discrimination. This contradicts Congress' intention to end wide-spread institutionalized discrimination against persons with disabilities.

The historical significance of Section 504 cannot be overstated. Section 504 challenges traditional notions of disability. Its antidiscrimination language acknowledges that many of the problems faced by disabled people are not an inevitable consequence of physical or mental traits themselves, but rather of the false perceptions and prejudices others hold about those traits. Congress recognized that only a broad ban on discrimination would realize the ultimate goal of rehabilitation legislation—the integration of disabled people into all aspects of American life.

Nothing is more central to the Congressional goal of independence than employment. Therefore a restrictive interpretation of employment coverage is contrary to the very purpose of the 1973 Rehabilitation Act, and the history and language of Section 504.

The roots of prejudice against and stereotypes about disabled people reach far back in history and persist today. In early societies this view of disabled people resulted in persecution, neglect and death. These practices gradually gave way to the more humanitarian belief that disabled people should be given care and protection. Persecution was replaced largely by pity, but the exclusion and segregation of disabled people remain unchallenged. Over the years, the view of disabled people as incompetent and dependent on charity, custodial care and protection became firmly imbedded in the public consciousness.

The discriminatory nature of policies and practices which exclude and segregate disabled people has been glossed over with good intentions. The social consequences of being disabled bear little relationship to the physical or mental characteristics or limitations imposed by a disability. I know because I am so-called "disabled" person. I know only too well the pain of discrimination. When I was diagnosed as having epilepsy, people suddenly no longer saw me, but only a disability. They presumed that epilepsy dictated my life. Well, they were wrong. The social stigma of disability—the discrimination which is often worse than the disability—must not be condoned by our government.

It is only within the last decade that a fundamental challenge to traditional notions about disability has been launched. There is a growing awareness of the similiarities between racial prejudice and the prejudice experienced by disabled people; and like women, disabled people have identified "paternalism" as a major obstacle to economic and social advancement.

More importantly, Section 504 represents a direct attack on the stereotypes and prejudices that have served to exclude and segregate disabled people for centuries. Section 504 reflects a broad governmental commitment to the equal citizenship of disabled Americans.

The Supreme Court has dramatically limited that commitment. At a time when disabled people are beginning to benefit from the protections of Section 504, the Court has decided to narrow coverage in all civil rights laws in all areas, not just education and employment. Congress must clearly ban discrimination in all areas receiving federal aid, including education, employment, health, social services, transportation and housing.

Section 504 guarantees 36 million disabled Americans the opportunity to participate fully in our society. The Civil Rights Restoration Act of 1985 ensures that the opportunity is not a hollow one. I will urge my colleagues to enact this legislation expeditiously. We must restore the rights and we must restore the pride that is still new to millions of disabled citizens. We must restore the dream of the of day when all disabled people can take their rightful place in society.

The CHAIRMAN. Thank you for being brief and to the point, Mr. Coelho. You recognize the problem, as much as I do, about members having to vote.

The Chair will declare a 3-minute recess. The members will be returning promptly, and if we do not disadvantage the witnesses, I would ask them to remain. Of course, if there is any kind of urgency, we certainly would excuse anyone.

Other than that, the committee stands in recess for 3-minutes.

[Recess.]

The CHAIRMAN. At the time that the committee recessed, Mr. Conyers had concluded his questioning——

Mr. CONYERS. I had one question.

The CHAIRMAN. You have used your 5-minutes, Mr. Conyers. I will call on the others, and get back to you. I am sure there are not that many.

Mr. Kildee.

Mr. **Kildee**. Thank you, Mr. Chairman.

Dr. Flemming, what do you expect might be the eroding effect on the Age Discrimination Act, if this legislation before this committee is not passed?

Mr. **Flemming**. Well, in the first place, the Age Discrimination Act, as passed by the Congress, has created some expectations in the lives of older persons, because we know that in the delivery of services that are supported by the Federal Government, ageism has played a major role.

For example, the U.S. Commission on Civil Rights, when I was Chair of the Commission, at the direction of the Congress, held hearings on what was happening in this particular area. And to take just one area, the area of mental health, it became very, very clear that in community mental health clinics, taking the country as a whole, only 3 to 4 percent of the people that were served by those community mental health clinics were 65 and older.

And when you probed as to the reasons, and so on, it became clear to us that ageism was the controlling factor.

Now, the executive branch has moved very slowly in the implementation of that act. They didn't get out their final regulations on it, really, until 1983. It took almost 5 years, after the Congress acted, for the executive branch to even get out its basic regulations. And there hasn't been any very vigorous enforcement of the act.

But if you should permit the *Grove City* decision to apply to the act, then you wouldn't have any chance in the world of getting at this factor of institutional discrimination, as it relates to ageism.

And in my opening testimony, I made reference to an educational institution where, let's say one department is getting Federal funds, and that department decides that they are going to live up to the act, and they are going to be responsive to the needs of older persons who are preparing for second careers. They are not going to practice ageism.

But, you can't put a program together just out of the offerings of one department. Other departments would have to be involved in it. And if those other departments, because they weren't getting Federal funds, were under no obligation, or responsibility to cease practicing ageism, and were under no obligation to respond to the needs of these older persons, because they wouldn't do it. And as a result, there wouldn't be a program for older persons.

So, we haven't been encouraged by the way in which the executive branch has responded to the mandate of the Congress.

But if the *Grove City* decision should stand, if that philosophy should be applied to the Age Discrimination Act, we would regard it in the field of aging as a very serious setback in our efforts to contend with ageism, as it is expressed in the delivery of services that are financed, in whole or in part, by the Federal Government.

Mr. **Kildee**. Thank you, Dr. Flemming.

The Human Resources Subcommittee, which I chair, has jurisdiction over the age discrimination and perhaps, sometime in the future, I would really appreciate a further response. Perhaps we could consult with you further on how we can convince the executive branch to be little more vigorous in the enforcement of that act.

Mr. FLEMMING. Congressman, I would be very happy to do that, because I was very much involved in working with the Congress, in terms of the passage of the act. I became very much impressed with the seriousness of the situation as a result of the hearings of the U.S. Commission on Civil Rights, and I feel very sad over the fact that the clear intent of the Congress has not been carried out.

And I would be delighted to work with the committee on it.

Mr. KILDEE. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Hayes.

Mr. HAYES. We have been benefited by excellent testimony, and not that it shouldn't have been expected, given the kind of record and commitment that each of you have in the whole area of civil rights over the years, particularly you, Mr. Hooks, with whom I have worked with during your King days, and marched with.

I would just like to know your reaction, I am somewhat bothered—as we talk about an act which is the Restoration of Civil Rights Act, H.R. 700, in the House, at a time when we got the head of the Civil Rights Department of the Federal Government making statements which amounts to devastation of civil rights, if people would adhere to it.

How do you see this—and statements directed towards many of the black leaders who have been instrumental in helping to accomplish what we have accomplished over the years, as part of the overall struggle. Do you see these kinds of statements on the part of black leadership within Government diluting the support for the restoration of civil rights in this area that we are talking about, the Supreme Court's most recent decision—it is much broader in terms of impact?

I would just like to know your reaction.

Mr. HOOKS. I think those kinds of statements are rather—could be dangerous, but fortunately, on both sides of the aisle, Democrat and Republican, I think that it is impossible for me to believe that 100 percent of 435 Congresspeople don't know better. They may resort to it, if they wish to, you know, point to it as evidence of something else, but I have been following the activities of Congress for the last 25 years. And it is impossible for anybody to serve and not know better than what is being said.

And I just think that the evidence is so abundant on the side against the statements being made, that they appear to be almost ludicrous, to look at them, because it appears—and I think it has been stated by my copanelists, that there is a statement being made now on optimism being generated, all is done, or at least if it hasn't been done, we stand just 1 inch from total and complete victory over age discrimination, sex discrimination, racial discrimination.

And one of the reasons that I am here this morning is because over these past 30 years, maybe longer, from time to time there has been a shift in emphasis from the President to the Congress, to the Supreme Court. And, frankly, today I hope it is in the Congress of the United States of America. And that's why we are hoping that the victory, as it relates to the three major branches of government, that the victory on H.R. 700—the passage will be overwhelming.

Directly now, very briefly, my analysis is that while those statements have the potential of being dangerous, sometimes I think they are so far from reality that it would be hard for any Congress person to really use those statements as a basis for opposition to H.R. 700.

I have great faith in the Congress, if they want to oppose it, they could find much better reasons somewhere, than the statements made by these people who head these departments in Government.

Mr. HAYES. I don't want to get into the area of enforcement, because this troubles me with this kind of leadership in these bodies, but I want to know if Ms. Goldsmith, or Mr. Flemming would care to respond?

Do you have anything, or do you agree with what Dr. Hooks has said?

Ms. GOLDSMITH. I would simply, warmly second, and support what Mr. Hooks has said.

Mr. FLEMMING. Well, I would like to say that I, likewise, concur and I recognize that he had been one of the persons that has been the subject of some of these comments. And all I want to say is that, as a member of the white community, I can't say that I can put myself in the position of those who are members of any minority community, including the black community.

I have to listen to those who are members of that community, and I recognize that there are some voices that are in conflict with the voices that I have been accustomed to listening to, but I am going to continue to listen to the voices that I have been listening to, including the voice of Ben Hooks, because I believe that those are the voices that are truly representing the needs and the concerns of the poor, and those who suffer in their communities.

And I am not at all sure that the other voices I am hearing have that deep seated concern for the poor and those who suffer.

Mr. HAYES. Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Chairman, would the gentleman yield, if he has any time left?

There is a question, I think we ought to clear up before this panel leaves. Our colleague from Texas, Mr. Bartlett, in questioning the appropriateness of bringing title VII to the Congress.

I think you should know that in the last time around, he brought an amendment to that effect to this bill, and that was not made clear whether we want separate legislation, or whether that would be appropriate to this legislation.

I think that we should get your reactions on the record in that connection.

Mr. HOOKS. Mr. Conyers, let me say for the record, while I have supported the concept that Mr. Bartlett enunciated of applying these titles to Congress, at the same time I think it would bog down this bill, and it could be very dangerous to add it to this measure. I think this measure ought to speak for itself.

It was designed originally in the last Congress, and in this Congress, to remedy the *Grove City,* and we must be very frank in admitting that prior to the *Grove City* case, there was no legislation mandating Congress to do certain things.

So, you can't restore—I think the word restoration means bringing back that which was. With Congress it must be an original kind of thing, and I think it deserves special attention. And while I favor it, I do not favor it as an amendment to this H.R. 700.

Mr. FLEMMING. Congressman Conyers, as one who responded to that question affirmatively, in terms of my feeling relevant to the inclusion of the legislative branch, I agree with Mr. Hooks completely. And I appreciate your giving us the opportunity to straighten out the record on that.

I certainly would not favor that being offered as an amendment to this bill. I mean, this bill has one objective in mind, and that's to set the record straight, as far as the Congress is concerned, growing out of the *Grove City* decision.

Now, it seems to me if that gets mixed up with any other objective, it will help to slow down the whole process, maybe help to defeat it.

And I think if the title VII issue, as it relates to the legislative branch, is to be faced, it should be faced as separate legislation, and it shouldn't be attached to anything like this legislation.

Mr. Chairman, I mentioned in my testimony a document entitled "Injustice Under the Law." I said I assumed that someone would ask to have it included in the record of these hearings.

I really would, in view of the fact that I did mention it and referred to it a number of times, I would appreciate it if it could be included in the record of the hearings.

The CHAIRMAN. Without objection, the Chair will have it included in the record at this point.

Mr. CONYERS. Did you wish to respond, Ms. Goldsmith?

Ms. GOLDSMITH. At the risk of giving the impression that the three of us are a monolith, and don't ever disagree on anything, let me say that, yes, I do concur with the statement of my colleagues.

Mr. CONYERS. Well, you should know that there is separate legislation to this effect, in the chairman's subcommittee. So, all the members that are anxious to repair this obvious problem, can all cosponsor the legislation pending, and we will rush it through on a separate track, if that is the feeling of the Congress.

And I thank you all for your responses.

The CHAIRMAN. Ms. Goldsmith, since the *Grove City* decision, could you describe the effect that it has had on sex discrimination? Have you observed or documented any cases, or instances of such sex discrimination, stemming from the interpretation placed by the Court in *Grove City*?

Ms. GOLDSMITH. Yes, there have been numerous documented examples. The report that Dr. Flemming refers to, "Injustice Under the Law," cites several of them, and there are at least 44 specific title IX cases that we know have been dropped, or placed on administrative hold.

It was only one week after the *Grove City* decision that——

The CHAIRMAN. Dropped by the Department of Education?

Ms. GOLDSMITH. Yes.

It was only one week after the *Grove City* decision that a case was dropped—charges were dropped against the University of Maryland, charges of sex discrimination in the athletic department.

There had been to that point considerable documentation of the fact that sex discrimination was, indeed, occurring. But because the athletics department did not directly receive any Federal funds, the charges could not be pursued.

And it seems clear that it is a perversion of the intent of Congress originally in passing title IX, to allow such a situation to occur. But there are many that we know of for certain. There are obviously, undoubtedly many more that have occurred, but that have simply taken the form of people not pressing charges, because they know there would be no possibility under the *Grove City* ruling.

The CHAIRMAN. Would you submit for the record such documentation that you may have either now, or in the future?

Ms. GOLDSMITH. Yes.

The CHAIRMAN. This record will be held open several weeks, so we will certainly insert such documentation as you submit.

Ms. GOLDSMITH. We will be very pleased to do that.

The CHAIRMAN. Any further questions?

[No response]

The CHAIRMAN. If not, again, the Chair would like to thank you, Dr. Flemming, Ms. Goldsmith, and you, Mr. Hooks, for your testimony before the committee this morning. It has been most helpful, and you have again served well the interests of the people.

Dr. Flemming, we are going to put you on the payroll, I suspect, one of these days. We certainly appreciate the consistency with which the three of you have really served the cause, and the committee is deeply thankful.

This afternoon, at 1:30, Mr. Reynolds and other witnesses will be before the committee.

The committee will adjourn until 1:30 this afternoon.

[Whereupon, at 11:45 a.m., the committee recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee is called to order.

The hearing this afternoon will consist of the Assistant Attorney General of the Department of Justice, Mr. William Bradford Reynolds.

We have other witnesses that will be heard from. Several of the witnesses who were invited have declined, including Ms. Betty Dobson, who was supposed to represent the Department of Transportation.

Also, the Secretary of HHS, Secretary Heckler, has declined. My understanding is that the only other witness is Mr. Oliver—Mr. Oliver, I understand has also declined.

The Chair will take appropriate action regarding refusals to testify. The committee is determined that we hear from these various witnesses, and will take such appropriate action as the joint committees decide.

We are very pleased this afternoon to hear from Mr. Reynolds, who is present. Mr. Reynolds, you may be seated at the witness table. We appreciate your appearance before the committee, and we look forward to an constructive and certainly a fine statement from you. We do have your full statement, which we will enter in the record at this point. Because of the time and the desire of members to question witnesses, which is much beyond the control of the Chair, we would appreciate your summarizing, to the extent possible, and saving as much time as possible, for the questioning of other witnesses, after you have completed.

[Prepared statement of William Bradford Reynolds follows:]

PREPARED STATEMENT OF WILLIAM BRADFORD REYNOLDS, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Mr. Chairman and Members of this Joint Committee, I appreciate the invitation to appear before you at these hearings and welcome this opportunity to present the views of the Department of Justice on the legislative proposal before you intended to address the Supreme Court's decision in the *Grove City* case.

It is, I think, a measure of our times, and a clear reflection of the progress made over the past twenty years, that we can come together today to discuss a new civil rights bill, voicing either support or opposition as the case may be, confident that we all share a revulsion for acts and practices of discrimination against any person on account of race, color, national origin, religion, sex, age, or handicap. The legislative framework that Congress has constucted over the past two decades has provided the Executive and Judicial branches with the essential tools they needed to wage a winning war against these most invidious forms of bias and prejudice. While that war is admittedly not yet won, civil rights enforcement activity has indeed brought us to the brink of victory—with, I am proud to say, strides made in the past four years every bit as impressive as in any other Administration.

But I am not here this afternoon to detail the Justice Department's remarkable record since 1981 of civil rights enforcement on behalf of all Americans victimized by discrimininatory conduct. That is for another day. Today I want to speak to H.R. 700, which carries the title "The Civil Rights Restoration Act of 1985." That bill revives a debate—a much needed debate, I might add—that was regrettably truncated last year in the House, and received only belated attention in the Senate before adjournment. The provocation for the legislation is the Supreme Court's *Grove City* decision of a little more than a year ago.[1] As we all know, the Court was called upon in that case to interpret the reach of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits sex discrimination in any "education program or activity" that receives federal financial assistance.

It is enough for these purposes to focus on the Court's principal holdings in *Grove City*. First, the Court found that federal aid to students enrolled at Grove City College was sufficient to trigger Title IX coverage of the school, even though Grove City received no federal funds directly. That coverage, however, the Court held, pertained only to the education program or activity identified with the funding—in that case, the student financial aid office.

The *Grove City* decision surprisingly touched off an avalance of criticism. I say "surprisingly" because the programmatic interpretation announced by the Supreme Court was precisely what Congress intended at the time of Title IX's enactment some 13 years ago, as the legislative debates at that time make clear—and is wholly consistent with the manner in which the lower federal courts had been reading that and similar statutes for years.[2] Nonetheless, many reached to overstate the *Grove City* decision, representing its program-specific holding to be a narrowing of Title IX coverage, and in turn the coverage under Title VI, Section 504, and the Age Discrimination Act. Accordingly, legislation was introduced ostensibly aimed only at overturning the program-specific holding of *Grove City*, but in reality setting forth a much more far-reaching statutory measure. That effort having faltered in the 98th Congress, we are back today to examine the new proposal introduced at the beginning of this legislative session as H.R. 700—proposed once again as a *Grove City* bill.

One thing that can, and should, be said at the very outset about H.R. 700 is that it is *not* a proper description of it to call the bill *Grove City* legislation." The Administration fully agrees that the Supreme Court's programmatic interpretation of Title

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[1] *Grove City College* v. *Bell*, 104 S.Ct. 1211 (1984).

[2] E.g., *Hillsdale College* v. *Department of Health, Education and Welfare*, 696 F.2d 418 (6th Cir. 1982), vacated and remanded, 104 S. Ct. 1673 (1984) in light of *Grove City College* v. *Bell*, 104 S. Ct. 1211 (1984); *Rice v. President & Fellows of Harvard College*, 663 F.2d 336 (1st Cir. 1981), *cert. denied*, 456 U.S. 928 (1982); *University of Richmond* v. *Bell*, 543 F. Supp. 321 (E.D. Va. 1982); *Othen* v. *Ann Arbor School Board*, 507 F. Supp. 1376 (E.D. Mich. 1982), *aff'd* 699 F.2d 309 (6th Cir. 1983); *Bachman* v. *American Society of Clinical Pathologists*, 577 F. Supp. 1257 (D.N.J. 1983).

IX should be overturned by providing through a statutory amendment institution-wide coverage of colleges and universities. The correct way to accomplish that goal, however, is through a bill like S. 272, introduced by Senator Dole in the Senate and fully supported by the President.

S. 272 provides simply that, if federal aid is extended to any of a college's or university's educational programs or activities, then all of that college's or university's educational programs and activities will be subject to Title IX's prohibition against sex discrimination. Accordingly, women's college athletic programs—which were a primary focus in last year's hearings—would under this formulation receive the full benefit of Title IX's protections. The Dole bill goes even farther. In an effort to alleviate any possible concern that students could be deprived of equal education opportunities on account of race, national origin, handicap or age, S. 272 amends the three similarly-worded, cross-cutting civil rights statutes—Title VI of the Civil Rights Act of 1964 (race, color, and national origin), Section 504 of the Rehabilitation Act of 1973 (handicap) and The Age Discrimination Act of 1978 (age)—to ensure that, as applied to education institutions, coverage upon receipt of any federal funds will be institution-wide, not program-specific.

The legislation I have just described is *fully responsive* to the *Grove City* decision. It assigns to Title IX the broad coverage demanded by some immediately following the Supreme Court's ruling and certainly removes any spectre that women's athletics (or any other education program) will be unprotected against sex discrimination—or, indeed, against other forms of unlawful discrimination. Moreover, the Dole bill states explicitly that, as to the application of all four cross-cutting civil rights statutes outside the educational environment of schools, colleges and universities, their coverage is to remain as broad as it always has been uninfluenced one way or the other by the Supreme Court's interpretation of Title IX in *Grove City.*[3]

H.R. 700 goes beyond—far beyond—the Title IX concerns raised by *Grove City* and the comprehensive legislative answer to that decision provided in S. 272. As with its counterpart in the Senate (S. 431), H.R. 700 moves the debate to a much larger arena, one that is no longer interested only in overturning *Grove City* by amending Title IX, but has as its wider focus civil rights enforcement generally and the proper role to be played by the Federal Government. Let there be no mistake about it, the so-called "Civil Rights Restoration Act of 1985" adopts for the first time a uniquely expansive view of federal enforcement authority in the field of civil rights. Nothing about the bill even hints at a "restoration." Instead, H.R. 700 uses the extension of a federal dollar as the excuse for opening virtually every entity in this country—public and private—to federal supervision, regulation, intervention, intrusion and oversight. Onerous administrative reporting requirements, disruptive agency compliance reviews, and massive bureaucratic paperwork, all will become a regular feature of a dollar's worth of federal assistance.

It is no small irony that, on the heels of two elections where the citizens of this Nation voted overwhelmingly to reduce federal intrusion and interference in our daily lives, this Joint Committee is now considering one of the most far-reaching legislative efforts in memory to stretch the tentacles of the Federal Government to every crevice of public and private sector activity.

Therein lies the real debate over H.R. 700. This remarkably expansive bill does not merely settle a dispute with the Supreme Court over the proper interpretation of Title IX, but rather goes much farther, raising fundamental issues about the proper reach of the Federal Government in our federalist system of limted government. The proposed legislation is premised on the philosophy that, in the area of civil rights, the Federal Government can and should be trusted with nothing less than maximum enforcement authority and thus the bill seeks a consolidation of virtually all power in this area in the federal bureaucracy. Juxtaposed on the other side of the debate are those of us who continue to believe that the role of the Federal Government under our Constitution is a limited one and that an excessively powerful federal regulatory force should not be allowed to trample upon legitimate claims to independence and pluralism in the private sector without a strong showing of need.

Here, the occasion for "need" is *Grove City*. Yet, H.R. 700's response to that "Title IX-only" ruling can properly be likened to the proverbial "killing of a gnat with an elephant gun." Some of the more obvious consequences are worth highlighting.

H.R. 700 starts with the statement of an intent "to restore the prior consistent and longstanding executive branch interpretation and broad, institutionwide application of those laws [Title IX, Title VI, Section 504 and the Age Discrimination Act] as previously administered." Mr. Chairman, the prior "executive branch interpretation" of the statutes in question is not found in a single agency, but in fact resides in those 28 executive agencies of the Federal Government extending federal financial assistance. Not only have their respective interpretations over the years of thse statutes not been "consistent" from one agency to another, they have not even been internally "consistent"; moreover, few agency pronouncements have been "longstanding." The same can be said for the various agency "applications" of the four civil rights laws: while the descriptive modifier "broad, institutionwide" probably fits some administrative action in some agencies, those instances mark the exception rather than the rule. *See, e.g.*, 34 C.F.R. § 100.4(d)(2); 45 C.F.R. § 80.4(d)(2). It is a most imperfect legislative technique for Congress to offer vague and ill-defined legislation that states in its preamble an intention to look for interpretative guidance to an amorphous body of prior regulatory and administrative activity—whatever it may be and no matter how unfaithful it was to the legislation itself. While this language is obviously hortatory, and cannot have the effect of codifying the myriad agency interpretations and practices, the preamble's reference alone leaves unclear the intended parameters of H.R. 700.

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[3] Reference is also made in S. 272 to *North Haven Board of Education* v. *Bell*, 456 U.S. 512 (1982), as another Supreme Court decision construing Title IX as programmatic in scope that should not influence future court interpretatons of these laws.

If, as some have suggested, the essential thrust of the proposed bill is simply to give expansive coverage to the cross-cutting statutes, so that all disputes are to be resolved in favor of enlarging (not contracting) the regulatory reach of agencies under Title IX, Title VI, Section 504 and the ADA, that, too, is problematic. H.R. 700 is being proposed in much narrower terms as a civil rights *restoration* measure; yet much of its language goes well beyond "restoring" federal regulatory authority to pre-*Grove City* understandings. Take, for example, the new definition of the term "program or activity" to include "all the operations" of an entity "any part of which is extended Federal financial assistance." At its most expansive, Title IX of the Education Amendments of 1972 pertains in its present form only to "education programs or activities." The proposed new language nonetheless can properly be read as deleting the modifier "education," and thus raising for the first time the possibility of Title IX coverage of noneducational programs and activities. Whatever else might be said about this proposed amendment, it plainly is not in any sense "restorational."

Nor do the four subsections to the definition of "program or activity"—that undertake to describe coverage in terms of types of "entities"—harken back to pre-*Grove City* law in any meaningful or consistent fashion. Rather, the language is, for the most part, imprecise and open-ended, leaving vulnerable to federal regulation and oversight a variety of institutions, programs, and probably even individuals which Congress had previously chosen to leave free from the burden of federal regulatory control.

Thus, the reference in H.R. 700 to "a department or agency of a state or of a local government"—all the operations of which are to be covered if any part receives federal funding—opens the way for the first time for a nonfunded activity of a state agency in northern California, for example, to be subject to federal compliance reviews because of some other, unknown and wholly unrelated, funded activity of that same state agency that is going on in southern California. In short, under the bill, receipt of funds by one program operated by a department of a state in one area of the state would bring the Federal Government's regulatory power to bear on completely unrelated, and nonfunded, operations in a distant part of the state or locality. As a consequence, those who operate their activities without federal funding would be subject to possibly unfamiliar or unknown regulations and regulators despite the fact that they have no knowledge, control, or influence over those other persons in the department who chose to receive federal funds. This, again, can hardly be called a "restoration" of pre-*Grove City* civil rights coverage.

The same can be said with respect to the portion of H.R. 700 aimed directly at educational institutions. The bill here defines a program or activity as, among other things, "a university or system of higher education." This necessarily results in far broader coverage than anything contemplated under Title IX or the other cross-cutting statutes prior to *Grove City*. Never has the Department of Education sought Title IX assurances of compliance from entire *systems* of higher education, such as the University of California system; rather, it has sought and obtained such documentation only from each unit within the system that receives funding, such as U.C.L.A. Moreover, within each university or campus, federal financial assistance to the law school, for example, has heretofore not been interpreted to trigger coverage of other administratively separate units, such as the medical school or the school of undergraduate studies.[4] H.R. 700 appears to change all that.

Also, from all appearances, H.R. 700 would change coverage of parochial schools that receive federal financial assistance, for example, by possibly bringing them within reach of Title IX as a result of including "other school systems" within the multi-definitional description of program or activity. Since there are no qualifiers (such as exist under current statutes), the receipt of federal funds by a single Catholic school in Chicago would presumably bring all Catholic schools in the entire Archdiocese within the Federal Government's regulatory grasp.

No less far-reaching is the bill's sweeping treatment of private organizations as fitting within the new definition of "program or activity." Under H.R. 700, all of the operations of a corporation, or partnership, or other private organizations are covered if any of their parts are extended federal aid. Thus, the bill would not just cover all the operation of a privately-owned hospital if one part of the hospital received funding—a primary goal of the bill's Senate sponsors. *See, e.g.,* 131 *Cong. Rec.* S1312 (daily ed. Feb. 7, 1985) (remarks of Sen. Durenberger). It would cover all the operations of the corporation as well, whether or not related to the delivery of health services. This stands in stark contrast with pre-Grove City law, when private enterprises were free from federal intrusion or interference except to the extent of their funded programs and activities.

Even so, I have yet to reach the outer limits of the regulatory net cast by H.R. 700. For, in the final subsection defining programs or activities, the bill utilizes the vaguest of catchall language to sweep within its coverage "any other entity determined [to be covered] *in a manner consistent with* coverage provided with respect to entities described in [the preceding three] paragraphs" (emphasis added). I will readily admit to perplexity as to the intended meaning of the phrase "in a manner consistent with." Is the Mom-and-Pop grocery store that receives food stamps from customers in payment for produce to be regarded as covered "in a manner consistent with" the coverage of a Grove City College that receives student tutition payments that are comprised, at least in part, of federal loans? Are farmers and ranchers who receive federal price supports or crop insurance subsidies or disaster loans to be regarded as covered "in a manner consistent with" the coverage of a private corporation that receives a dollar of federal financial assistance? Is a transferee of federal funds from the initial recipent to be covered "in a manner consistent with" the coverage of a state agency that receives a transfer of federal funds from another department or office of the state? No exemptions are written into the proposed legislation for ultimate beneficiaries.

In each of the above examples, monies, disbursed by the Federal Goverment ultimately find their way into the coffers of the "other entity," either directly or indirectly, and H.R. 700 indicates that no matter how large or small the federal assistance, how long or fleetingly it remains with the entity, or how far removed in the chain of distribution, coverage attaches Indeed, on the understanding of H.R. 700 as providing for systemwide coverage of higher education "systems," once a federal dollar is received by any component of that system, there is reason for concern by members of trade associations, for example, that aid to the association or one of its members could lead to coverage of all other members "in a manner consistent with" systemwide coverage of higher education systems. Similarly vulnerable, it seems, may be subsidaries within a "corporate family," bank affiliates, and even independent contractors—all of which by analogy can (without ever actually receiving federal funds or knowing others with whom they are doing business are federally funded to some extent) arguably be swept within the coverage of H.R. 700, as part of a "system" (*i.e.*, another entity covered "in a manner consistent with" coverage of a nonfunded component of a higher education system).

One other bit of confusion is introduced by the catchall reference to "any other entity." Presumably, once the entity is targeted as a recipient, it is subject to the same federal regulation and oversight of "all operations" of its business and other activities, no matter how widely divergent or broadly dispersed they may be. That is, at least, one likely way to read "in a manner consistent with" other coverage determinations under H.R. 700.

A final provision of the bill deserving comment is the fund termination provision. H.R. 700 would leave fund termination intact as a remedy but would make it applicable "to the particular assistance *which supports* such noncompliance" (emphasis added). Ths is yet another expansive change from the current law, which limits fund termination "to the particular program, *or part thereof,* in which such noncompliance has been so found." *See, e.g,* 20 U.S.C. § 1682 (Title IX) (emphasis added). The effect of this amendment would be to overturn that portion of *North Haven Board of Education* v. *Bell,* 456 U.S. 512 (1982), which holds that the coverage and fund termination provisions of Title IX are coterminous.

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[4] The current statutory definition of "educational institution" in Title IX uses the phrase "administratively separate unit" as the institutional breakpoint. This phrase has been defined more precisely in agency regulations to depend on a school's admission's policy. Thus, each discrete and independent admissions program will generally identify the entity as an "administratively separate unit." See 34 C.F.R. 106.2(o).

There is a curious anomaly created by such an approach. The more expansive H.R. 700 is with respect to its coverage formula—reaching as it does *all* programs, activities, and operations of a college or university, state or local department or agency, private corporation, or any other entity receiving federal financial assistance—the less meaningful the fund termination clause becomes, even as expanded to permit the cutoff of funds that "support" noncompliance. To put it another way, as federal enforcement authority is stretched farther and farther beyond the actual funded activity, to unrelated, remote activities of distant affiliates, fund cutoff is simply not a reasonable remedy. Thus the most meaningful remedial provision is all but read out of the statute because of an overbroad and loosely defined coverage formula. Such legislation, it would seem, is in need of much more than a little bit of fine tuning. And that observation, of course, goes beyond the more obvious point that some more understandable definition of the phrase "supports such noncompliance" is needed than a statement that there must be a "specific nexus" between the funding and the discrimination in order to justify fund termination. 131 *Cong. Rec.* S 1307 (daily ed. Feb. 7, 1985) (remarks of Sen. Cranston).

The net effect of H.R. 700 is to expand dramatically the reach of the four cross-cutting antidiscrimination statutes that are the focus of the proposed legislation. Coverage is no longer to be tied to funded programs, or even necessarily to entities with funded programs, but is seemingly to be extended as well in elastic fashion to any and all components of a higher education system once one such component receives federal funds, to any and all activities and functions of a state or local department or agency, wherever located, once a federal dollar reaches that department or agency, to all plants, divisions, and sales outlets of a private corporation if any activity of the corporation receives federal aid, and to any other entity in its entirety (including all its parts and subparts) if it or any of its affiliates are extended federal financial assistance—directly or indirectly, by transfer or otherwise.

Before Congress undertakes to make so massive a change in existing federal civil rights enforcement under Title IX, Title VI, Section 504 and the ADA, one would hope that it would first compile a record of a *demonstrated need* to superimpose a concomitantly expanding federal bureaucracy on state and local governments and public and private entrepreneurs in the newly covered areas contemplated by H.R. 700. Thus far, we have heard no articulated reason for taking such drastic action other than the *Grove City* decision and its possible adverse impact on women's college athletic programs. That problem, however, is more than answered by the Dole bill in the Senate, and does not require the total revamping of federal enforcement authority that is called for in the Civil Rights Restoration Act of 1985.

Congress has indeed passed broad civil rights legislation in the past to redress a demonstrated failure on the part of states and localities and private institutions to afford equal opportunities regardless of race, sex, religion, national origin or handicap. But in those cases, and they are familiar to us all—the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968, the Rehabilitation Act of 1973—the record was made that severe discrimination problems required an increased federal role. By contrast, we have nothing suggested in the debates underlying legislation similar to H.R. 700 in the last session of Congress, in the lengthy Presidential campaign of 1984, or in more recent utterances promoting the present bill, that even hints at like problems in the civil rights area today.

Rather, the impetus of H.R. 700 seems to be a purely ideological one—*i.e.,* to use the overturning of *Grove City* as a vehicle for expanding to the fullest extent possible the reach and role of the federal bureaucracy into every facet of the public and private affairs of all our citizens. Nor has any care been given to defining meaningful parameters for such legislation. Instead, Congress is being asked in H.R. 700 effectively to incorporate on a wholesale basis, sight unseen, the staggering body of administrative and regulatory practices and interpretations that has evolved throughout the Government agencies over the life of the four cross-cutting statutes. Even if the need could be shown for so extensive a federal expansion of civil rights regulatory activity, there certainly must be a more thoughtful and effective way to accomplish that result than the blanket codification of these statutes' "prior administration."

For all of the foregoing reasons, H.R. 700 is not a useful legislative tool for the task at hand. Far more responsive to the stated need to overturn *Grove City* in order to protect against discrimination in educational institutions is Senator Dole's bill, S. 272, pending in the Senate. That proposal is deserving of the full support of both Houses of Congress because it responsibly, and with a welcome measure of clarity and precision, addresses the concerns raised by the Supreme Court decision and insures that, within our federalist system, there will be no compromise of civil rights protections or of the enforcement activity necessary to guarantee those protections.

Thank you, Mr. Chairman. That concludes my prepared remarks and I would be happy to answer any questions.

The CHAIRMAN. I need not indicate to you that the committee is appreciative of your appearance. If you have any associates who came with you, please identify them for the record.

We look forward to your presentation.

STATEMENT OF WILLIAM BRADFORD REYNOLDS, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. REYNOLDS. Thank you, Mr. Chairman.

I appreciate the invitation that was extended, and am pleased to be here and have this opportunity to testify.

I have a statement that is a bit lengthy, I will try to expedite the delivery of it to the fullest extent, to provide full opportunity for questioning.

As I say, I am appreciative of the chance to be here, and I welcome the opportunity to present the views of the Justice Department on the legislative proposal before you, intended to address the Supreme Court's decision in the *Grove City* case.

It is, I believe, a measure of our times, and a clear reflection of the progress made over the past 20 years, that we can come together today to discuss a new civil rights bill, voicing either support or opposition as the case may be, confident that we all share a revulsion for acts and practices of discrimination against any person on account of race, color, national origin, religion, sex, age, or handicap. The legislative framework that the Congress has constructed over the past two decades has provided the executive and judicial branches with the essential tools they needed to wage a winning war against these most invidious forms of bias and prejudice. While that war is admittedly not yet won, civil rights enforcement activity has indeed brought us to the brink of victory—with, I am proud to say, strides made in the past 4 years every bit as impressive as in any other administration.

I am not, of course, here this afternoon to detail the Justice Department's remarkable record since 1981 of civil rights enforcement on behalf of all Americans victimized by discriminatory conduct. That is for another day. Today I want to speak primarily to H.R. 700, which carries the title "The Civil Rights Restoration Act of 1985." That bill revised a debate—a much needed debate, I might add—that was regrettably truncated last year in the House, and received only belated attention in the Senate before adjournment. The provocation for the legislation is the Supreme Court's *Grove City* decision of a little more than a year ago. As we all know, the Court was called upon in that case to interpret the reach of title IX of the Education Amendments of 1972, which prohibits sex discrimination in any education program or activity that receives Federal financial assistance.

It is enough for these purposes to focus on the Court's principal holdings in *Grove City*. First, the Court found that Federal aid to students enrolled at Grove City College was sufficient to trigger title IX coverage of the school, even though *Grove City* received no Federal funds directly. That coverage, however, the Court held, pertained only to the education program or activity identified with the funding—in that case the student financial aid office.

The *Grove City* decision surprisingly touched off an avalanche of criticism. I say surprisingly, because the programmatic interpretation announced by the Supreme Court was precisely what Congress intended at the time of title IX enactment, some 13 years ago, as the legislative debates at that time make clear—and is wholly consistent with the manner in which the lower Federal courts had been reading that, and similar statutes for years. Nonetheless, many reached to overstate the *Grove City* decision representing its program specific holding to be a narrowing of title IX coverage, and in turn the coverage of title VI and section 504, and the Age Discrimination Act. Accordingly, legislation was introduced ostensibly aimed only at overturning the program specific holding of *Grove City*, but in reality setting forth a much more far-reaching statutory measure. That effort having faltered in the 98th Congress, we are back today to examine the new proposal introduced at the beginning of this legislative session as H.R. 700—proposed once again as a *Grove City* bill.

One thing that can, and should, be said at the very outset about H.R. 700 is that it is not a proper description of it to call the bill *Grove City* legislation. The administration fully agrees that the Supreme Court's programmatic interpretation of title IX should be overturned by providing through a statutory amendment, institution wide coverage of colleges and universities. The correct way to accomplish that goal, however, is through a bill like S. 272, introduced by Senator Dole in the Senate, and fully supported by the President.

S. 272 provides simply that, if Federal aid is extended to any of a college's or university's, educational programs or activities, then all of that college's or university's, educational programs and activities will be subject to title IX's prohibition against sex discrimination. Accordingly, women's college athletic programs—which were a primary focus of last year's hearings—would under this formulation receive the full benefit of title IX's protections. The Dole bill goes even farther. In an effort to alleviate any possible concern that students could be deprived of equal education opportunities on account of race, national origin, handicap or age, S. 272 amends the three similarly worded, crosscutting civil rights statutes—title VI of the Civil Rights Act of 1964—race, color, and national origin—section 504 of the Rehabilitation Act of 1973—handicap—and the Age Discrimination Act of 1978—age—to ensure that, as applied to educational institutions, coverage upon receipt of any Federal funds will be institutionwide, not problematic.

The legislation I have just described is fully responsive to the *Grove City* decision. It assigns to title IX the broad coverage demanded by some, immediately following the Supreme Court's ruling and certainly removes any specter that women's athletics—or any other education program—will be unprotected against sex discrimination—or, indeed, against other forms of unlawful discrimination. Moreover, the Dole bill states explicitly that as to the application of all four crosscutting civil rights statutes, outside the educational environment of schools, colleges and universities, their coverage is to remain as broad as it always has been, uninfluenced one way or the other by the Supreme Court's interpretation of title IX in *Grove City.*

H.R. 700 goes beyond—far beyond—the title IX concerns raised by *Grove City,* and the comprehensive legislative answer of that decision provided in S. 272. As with its counterpart in the Senate, (S. 431), H.R. 700 moves the debate to a much larger arena, one that is no longer interested only in overturning *Grove City* by amending title IX, but has as its wider focus civil rights enforcement generally and the proper role to be played by the Federal Government. Let there be no mistake about it, the so-called Civil Rights Restoration Act of 1985 adopts for the first time a uniquely expansive view of Federal enforcement authority in the field of civil rights. Nothing about the bill even hints at a "restoration." Instead, H.R. 700 uses the extension of a Federal dollar as the excuse for opening virtually every entity in this country—public and private—to Federal supervision, regulation, intervention, intrusion, and oversight. Onerous administrative reporting requirements, disruptive agency compliance reviews, and massive bureaucratic paperwork, all will become a regular feature of a dollar's worth of Federal assistance.

It is no small irony that, on the heels of two elections where the citizens of this Nation voted overwhelmingly to reduce Federal intrusion and interference in our daily lives, this joint committee is now considering one of the most far-reaching legislative efforts in memory to stretch the tentacles of the Federal Government to every crevice of public and private sector activity.

Therein lies the real debate over H.R. 700. This remarkably expansive bill does not merely settle a dispute with the Supreme Court over the proper interpretation of title IX, but rather goes much farther, raising fundamental issues about the proper reach of the Federal Government in our federalist system of limited government. The proposed legislation is premised on the philosophy that, in the area of civil rights, the Federal Government can and should be trusted with nothing less than maximum enforcement authority and thus the bill seeks the consolidation of virtually all power in this area in the Federal bureaucracy. Juxtaposed on the other side of the debate are those of us who continue to believe that the role of the Federal Government under our Constitution is a limited one and that an excessively powerful Federal regulatory force should not be allowed to trample upon legitimate claims to independence and pluralism in the private sector, without a strong showing of need.

Here, the occasion for "need" is *Grove City.* Yet, H.R. 700's response to that "title IX-only" ruling can properly be likened to the proverbial "killing of a gnat with an elephant gun." Some of the more obvious consequences are worth highlighting.

H.R. 700 starts with the statement of an intent to restore the prior consistent and longstanding executive branch interpretation and broad, institution-wide application of those laws (title IX, title VI, 504 and the Age Discrimination Act) as previously administered. Mr. Chairman, the prior "executive branch interpretation" of the statutes in question is not found in a single agency, but in fact resides in those 28 executive agencies of the Federal Government extending Federal financial assistance.

Not only have their respective interpretations over the years of these statutes not been "consistent" from one agency to another, they have not even been internally "consistent;" moreover, few agency pronouncements have been "long standing." The same can be said for the various agency "applications" of the four civil rights laws, while the descriptive modifier "broad institution-wide" probably fits some administrative action in some agencies, those instances mark the exception, rather than the rule.

The CHAIRMAN. Mr. Reynolds, with apologies to you, there is a vote pending in the House and various Members have indicated they would like to make this vote.

If your time is such that it would allow us to do that, and come back, we can certainly do that with dispatch.

May I ask you, first of all, what is your time element this afternoon?

Mr. REYNOLDS. I can certainly wait for you to do that. How long are you talking about?

The CHAIRMAN. Five minutes.

Mr. REYNOLDS. Certainly, I am more than happy.

The CHAIRMAN. The committee is in recess for 5 minutes. And would those of you who are present, kindly return?

Thank you.

[Recess.]

The CHAIRMAN. The committee is called to order.

Mr. Reynolds, you may continue, please.

Mr. REYNOLDS. Thank you, Mr. Chairman.

I was in the middle of pointing out that the initial statement of intent in the preamble of H.R. 700 makes reference to the previous consistent executive branch interpretations of these several statutes.

And the point I was making was that those interpretations over the years have not been consistent from one agency to another, nor, indeed, internally consistent; and that the agency pronouncements have also very infrequently been long standing. The same can also be said with respect to agency applications of the four civil rights statutes, and the descriptive modifier in the preamble of "broad and institutional-wide coverage" where it does fit, has, indeed, been the exception rather than the rule.

All that leading up to the point I think should be made, which is that it is a most imperfect legislative technique for Congress to offer vague and ill-defined legislation that states in its preamble an intention to look for interpretative guidance to an amorphous body of prior regulatory and administrative activity—whatever it may be and no matter how unfaithful it was to the legislation itself. While this language is obviously hortatory, and cannot have the effect of codifying the myriad agency interpretations and practices, the preamble's reference alone leave unclear the intended parameters of H.R. 700.

If, as some have suggested, the essential thrust of the proposed bill is simply to give expansive coverage to the cross-cutting statutes, so that all disputes are to be resolved in favor of enlarging not—contracting—the regulatory reach of agencies under title IX, title VI, section 504 and the Age Discrimination Act, that, too, is problematic. H.R. 700 is being proposed in much narrower terms as a civil rights restoration measure; yet much of its language goes well beyond "restoring" Federal regulatory authority to pre-*Grove City* understandings. Take, for example, the new definition of the term "program or activity" to include "all the operations" of an entity, "any part of which is extended Federal financial assistance." At its most expansive, title IX of the Education Amendments of 1972 pertains in its present form only to education programs or activities. The proposed new language nonetheless can properly be read as deleting the modifier "education" and thus raising for the first time the possibility of title IX coverage of noneducational programs and activities. Whatever else might be said about this proposed amendment, it plainly is not in any sense "restorational."

Nor do the four subsections to the definition of "program or activity"—that undertake to describe coverage in terms of types of "entities"—harken back to pre-*Grove City* law in any meaningful or consistent fashion. Rather, the language is, for the most part, imprecise and open-ended, leaving vulnerable to Federal regulation and oversight a variety of institutions, programs, and probably even individuals which Congress had previously chosen to leave free from the burden of Federal regulatory control.

Thus, the reference in H.R. 700 to "a department or agency of a State or of a local government"—all the operations of which are to be covered if any part receives Federal funding—opens the way for the first time for a nonfunded activity of a State agency in northern California, for example, to be subject to Federal compliance review, because of some other, unknown and wholly unrelated funded activity of that same State agency that is going on in southern California. In short, under the bill, receipt of funds by one program, operated by a department of a State in one area of the State would bring the Federal Government's regulatory power to bear on completely unrelated, and nonfunded, operations in a distant part of the State or locality. As a consequence, those who operate their activities without Federal funding would be subject to possibly unfamiliar or unknown regulations and regulators despite the fact that they have no knowledge, control, or influence over those other persons in the department who chose to receive Federal funds. This, again, can hardly be called a "restoration" of pre-*Grove City* civil rights coverage.

The same can be said with respect to the portion of H.R. 700 aimed directly at educational institutions. The bill here defines a program or activity as, among other things, a "university, or system of higher education." This necessarily results in far broader coverage than anything contemplated under title IX or the other cross-cutting statutes prior to *Grove City.* Never has the Department of Education sought title IX assurances of compliance from entire system of higher education, such as the University of California system; rather, it has sought and obtained such documentation only from each unit within the system that receives funding, such as UCLA. Moreover, within each university or campus, Federal financial assistance to the law school, for example, has heretofore not been interpreted to trigger coverage of other administratively separate units, such as the medical school, or the school of undergraduate studies. H.R. 700 appears to change all of that.

Also, from all appearances, H.R. 700 would change coverage of parochial schools that receive Federal financial assistance, for example, by possibly bringing them within reach of title IX as a result of including "other school systems," within the multidefinitional description of program or activity. Since there are no qualifiers, such as exists under current statutes, the receipt of Federal funds by a single Catholic school in Chicago would presumably bring all Catholic schools in the entire archdiocese within the Federal Government's regulatory grasp.

No less far reaching is the bill's sweeping treatment of private organizations as fitting within the new definition of "program or activity." Under H.R. 700, all the operations of a corporation, or partnership, or other private organizations, are covered if any of their parts are extended Federal aid. Thus, the bill would not just cover all the operations of a privately owned hospital if one part of the hospital received funds—a primary goal of the bill's Senate sponsors. It would cover all the operations of the corporation as well, whether or not related to the delivery of health services. This stands in stark contrast with pre-*Grove City* law, when private enterprises were free from Federal intrusion or interference except to the extent of their funded programs and activities.

Even so, I have yet to reach the outer limit of the regulatory net cast by H.R. 700. For, in the final subsection defining programs or activities, the bill utilizes the vaguest catchall language to sweep within its coverage "any other entity determined in a manner consistent with coverage provided with respect to entities described in the preceding three paragraphs." I will readily admit the perplexity as to the intended meaning of the phrase "in a manner consistent with." Is the Mom-and-Pop grocery store that receives food stamps from customers in payment for produce to be regarded as covered "in a mannner consistent with" the coverage of a Grove City College that receives student tuition payments that are comprised, at least in part, of Federal loans? Are farmers and ranchers who receive Federal price supports or crop insurance subsidies or disaster loans to be regarded as covered "in a manner consistent with" the coverage of a private corporation that receives a dollar of Federal financial assistance? Is a transferee of Federal funds from the initial recipient to be covered "in a manner consistent with" the coverage of a State agency that receives a transfer of Federal funds from another department or office of the State? No exemptions are written into the proposed legislation for ultimate beneficiaries.

In each of the above examples, moneys disbursed by the Federal Government ultimately find their way into the coffers of "the other entity," either directly or indirectly, and H.R. 700 indicates that no matter how large or small the Federal assistance, how long or fleetingly it remains with the entity, or how far removed in the chain of distribution, coverage attaches. Indeed, on the understanding of H.R. 700 as providing for systemwide coverage for higher education systems, once a Federal dollar is received by any component of that system, there is reason for concern by members of trade associations, for example, that aid to the association, or one of its members could lead to coverage of all other members, "in a manner consistent with" systemwide coverage of higher education systems. Similarly vulnerable, it seems, may be subsidiaries within a "corporate family," bank affiliates, and even independent contractors—all of which by analogy, can—without ever actually receiving Federal funds or knowing others with whom they are doing business are federally funded to some extent—arguably be swept within the coverage of H.R. 700, as part of a system"—that is, another entity covered in a manner consistent with the coverage of a nonfunded component of higher education system.

One other bit of confusion is introduced by the catchall reference to "any other entity." Presumably, once the entity is targeted as a recipient, it is subject to the same Federal regulation and oversight of "all operations" of its business and other activities, no matter how widely divergent or broadly dispersed they may be. That is, at least, one likely way to read "in a manner consistent with" other coverage determinations under H.R. 700.

A final provision of the bill deserving comment is the fund termination provision. H.R. 700 would leave fund termination intact as a remedy but would make it applicable to the particular assistance which supports such noncompliance. This is yet another expansive change from the current law, which limits fund termination "to the particular program, or part thereof, in which such noncompliance has been so found." The effect of this amendment would be to overturn that portion of *North Haven Board of Education* v. *Bell,* which holds that the coverage and fund termination provisions of title IX are coterminous.

There is a curious anomaly created by such an approach. The more expansive H.R. 700 is with respect to its coverage formula—reaching as it does all programs, activities, and operations of a college or university, State or local department or agency, private corporation, or any other entity receiving Federal financial assistance—the less meaningful the fund termination clause becomes even as expanded to permit the cutoff of funds that support noncompliance. To put it another way, as Federal enforcement authority is stretched farther and farther beyond the actual funded activity, to unrelated, remote activities of distant affiliates, fund cutoff is simply not a reasonable remedy. Thus the most meaningful remedial provision is all but read out of the statute because of an overbroad and loosely defined coverage formula. Such legislation, it would seem, is in need of much more than a little bit of fine-tuning. And that observation, of course, goes beyond the more obvious point that some more understandable definition of the phrase "supports such noncompliance" is needed than the statement that there must be a "specific nexus" between the funding and the discrimination in order to justify fund termination.

The net effect of H.R. 700 is to expand dramatically the reach of the four cross-cutting antidiscrimination statutes that are the focus of the proposed legislation. Coverage is no longer to be tied to funded programs, or even necessarily to entities with funded programs, but is seemingly to be extended as well in elastic fashion to any and all components of a higher education system once one such component receives federal funds to any and all activities and functions of a State or local department or agency, wherever located, once a federal dollar reaches that department or agency to all plants, divisions, and sales outlets of a private corporation if any activity of the corporation receives Federal aid and to any other entity, in its entirety—including all of its parts and subparts—if it or any of its affiliates are extended Federal financial assistance—directly or indirectly, by transfer or otherwise.

Before Congress undertakes to make so massive a change in existing Federal civil rights enforcement under title IX, title VI, section 504, and the Age Discrimination Act, one would hope that it would first compile a record of a demonstrated need to superimpose a concomitantly expanding Federal bureaucracy in State and local governments and public and private entrepreneurs in the newly covered areas contemplated by H.R. 700. Thus far, we have heard no articulated reason for taking such drastic action other than the *Grove City* decision and its possible adverse impact on women's college athletic programs. That problem, however, is more than answered by the Dole bill in the Senate, and does not require the total revamping of Federal enforcement authority that is called for in the Civil Rights Restoration Act of 1985.

Congress had indeed passed broad civil rights legislation in the past to redress a demonstrated failure on the part of States and localities and private institutions to afford equal opportunities regardless of race, sex, religion, national origin or handicap. But in those cases, and they are familiar to us all—the Civil Rights Act of 1964, the Voting Rights Act of 1965, The Fair Housing Act of 1968, the Rehabilitation Act of 1973 the record was made that severe discrimination problems required an increased Federal role. By contrast, we have nothing suggested in the debates underlining legislation similar to H.R. 700 in the last session of Congress, in the lengthy Presidential campaign of 1984, or in more recent utterances promoting the present bill, that even hints at like problems in the civil rights area today.

Rather, the impetus of H.R. 700 seems to be a purely ideological one—to use that is, the overturning of *Grove City* as a vehicle to expanding to the fullest extent possible the reach and role of the Federal bureaucracy into every facet of the public and private affairs of all our citizens. Nor has any care been given to defining meaningful parameters for such legislation. Instead, Congress is being asked in H.R. 700 effectively to incorporate on a wholesale basis, sight unseen, the staggering body of administrative and regulatory practices and interpretations that has evolved throughout the Government agencies over the life of the four cross-cutting statutes.

Even if the need could be shown for so extensive a Federal expansion of civil rights regulatory activity, there certainly must be a more thoughtful and effective way to accomplish that result than the blanket codification of these statutes' prior administration.

For all of the foregoing reasons, H.R. 700 is not a useful legislative tool for the task at hand. Far more responsive to the stated need to overturn *Grove City*, in order to protect against discrimination in educational institutions is Senator Dole's bill, S. 272, pending in the Senate. That proposal is deserving of the full support of both Houses of Congress because it responsibly, and with a welcomed measure of clarity and precision addresses the concerns raised by the Supreme Court decision and insures that, within our federalist system, there will be no compromise of civil rights protections or the enforcement activity necessary to guarantee those protections.

Thank you very much, Mr. Chairman. That concludes my prepared remarks. And I would be happy to answer any questions.

The CHAIRMAN. Thank you, Mr. Reynolds.

I assume from your statement that we agree on the view of—maybe I should ask you whether you do, on the view that the Grove City College was a recipient of Federal assistance.

You agree with that, I assume?

Mr. REYNOLDS. That's correct.

The CHAIRMAN. Now, beginning on page 3, and continuing on page 4 of your statement, you state that, "the administration fully believes that the Supreme Court's problematic interpretation of title IX should be overturned by providing through a statutory amendment, institutionwide coverage of colleges and universities."

You then endorse S. 272, as a means of accomplishing this.

Now, I am sure you recognize that the Dole bill applies the so-called restoration to educational institutions, for title IX purposes.

Now, in defining title IX "educational institutions" is it defined to mean any public or private preschool, elementary, or secondary school, or any institution of vocational, professional or higher education, except in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, which term means each such school, college or department.

It would seem, therefore, that in the except clause you are saying that that department of a college, or departments of a college, which are administratively separate, will be the only units subject to antidiscrimination duties, not in fact, as you proclaim, will such duties run institutionwide.

Would you care to explain the apparent inconsistency in the statement that you made?

Mr. REYNOLDS. Certainly, Mr. Chairman. The definition that you read is one that has been treated fully in the regulations that have been promulgated with respect to title IX. An administratively separate unit in those regulations is defined to mean a school, department, or college, of an educational institution, other than a local educational agency, admission to which is independent of admission to any other component of such institution. So, in terms of the definition, as it has been utilized from the beginning, and as the regulations make clear, the department has to be one where admissions to that department would be independent from admissions to any other component of the institution.

This was aimed at—and it is clear from the regulatory history—a department such as a law department, or an arts department of a university that has an admissions program that is separate and apart from the medical school admissions, or the undergraduate admissions.

The CHAIRMAN. Are you saying that a medical school of a university is distinct from the university itself?

Mr. REYNOLDS. That's right. The definition——

The CHAIRMAN. And that's the interpretation that you place on it in the bill which is being proposed?

Mr. REYNOLDS. The university would be composed of an undergraduate school, and some number of graduate schools. To the extent that each of those schools has an independent admissions policy, it would stand on its own——

The CHAIRMAN. Would the physics department be treated separate from the college, or the university?

Mr. REYNOLDS. Not in any real world situation, I am aware of, Mr. Chairman. The physics department would not be treated that way, because its admissions that would be not independent from admissions to another component.

The CHAIRMAN. You are speaking of admissions now, the definition uses the words "administratively separate," it doesn't speak of admissions.

Mr. REYNOLDS. That's right.

The CHAIRMAN. Can you make a distinction between admissions, and if so, why is it not so defined in the proposal, if that is what you mean? You say only which are "administratively separate units."

Now, take a university such as the University of California, that has been mentioned today, which has many campuses, Davis, Southern California, UCLA, et cetera, but it has one administrative head, which is in Berkeley. Would you treat all of these separate, so that you could conceivably discriminate at, let's say the Davis campus, but not at the campus at UCLA?

Mr. REYNOLDS. Well, actually, I believe all of those campuses independently receive Federal financial assistance. But to go to your question, "administratively separate unit" is a defined term in the law, and we would amend title IX, and in so doing, continue to leave in place the definition that is in the statute and in the regulations, an "administratively separate unit" is defined by independent admissions policy and practice.

We your hypothetical we would look to see whether the particular campus was one that was independent—had independent admission's policy, separate and distinct from the others—and in those circumstances it would be an administratively separate unit, within the meaning of the statute and regulations as has been in place from, I think, shortly after passage of title IX.

That has always been the construction of "educational institution," and the definition of an "educational institution."

The CHAIRMAN. In the proposed Dole bill, do you provide for broadened coverage, only in the institutions engaged in education activities. Should the bill's failure to provide broad coverage in other areas, such as health, social services, transportation, or housing, which are supported by Federal financial assistance, concern us in this connection?

Mr. REYNOLDS. Well, I think the way the Dole bill is written, those questions would be resolved under existing law, as it exists today, without regard to what the Supreme Court has said as to the proper interpretation of title IX. There is, certainly, a rather heated debate that exists today over what that prior law may, or may not require for coverage.

The CHAIRMAN. Would you agree that they would follow the *Grove City* decision?

Mr. REYNOLDS. Would I agree that——

The CHAIRMAN. Would you agree that in all likelihood they will follow the same *Grove City* decision?

Mr. REYNOLDS. It is my view that a legal analysis of those statutes, based on their language and legislative history, would lead to the conclusion that they are program-specific in their interpretation, as Congress intended them to be. But there are others who would argue the other way.

The CHAIRMAN. Well, that is where we disagree, and that is why we have H.R. 700, because of that distinct disagreement: it is more than an ideological distinction, it is a very practical distinction.

Now, again, the Dole bill does not appear to cover noneducational activities. Do you agree that it does not cover noneducational activities?

Mr. REYNOLDS. It is addressed to educational activities.

I would say, Mr. Chairman, that if H.R. 700 is intended to address that area of disagreement, it certainly goes far beyond simply restoring what the other side's view of the law in this area, as to institution-wide coverage, as I tried to point out. If, indeed, the aim of H.R. 700 is simply to restore, or return the law to what is perceived to have been an institution-wide coverage of the other bills, it certainly goes well beyond anything that has been suggested as being, even in its most expansive, the coverage before——

The CHAIRMAN. Well, we disagree and it is not my role to debate you on that. It is pretty obvious that you do not support H.R. 700.

Would you also agree that various commercial activities of an institution, other than education, might be engaged in discrimination, while that same entity was receiving Federal funding. For example the cafeteria, could discriminate at the very institution that would be receiving Federal funding.

Do you agree, or disagree?

Mr. REYNOLDS. I think that under both bills if there was discrimination with regard to the cafeteria it would be covered. I also think that there are other laws in the Federal code, that probably would reach that kind of situation—title II; for employment, title VII.

The CHAIRMAN. Well, you just said that only educational activities, and if it went beyond that, then it overreached *Grove City.* Would you then explain why H.R. 700 is defective?

Now you say that both bills would do that.

Mr. REYNOLDS. I am saying that a cafeteria that is part of an educational establishment is one that has been recognized for some period of time as being within the educational institution for purposes——

The CHAIRMAN. You wouldn't define this as an educational activity, would you?

Mr. REYNOLDS. I would say that in those circumstances, the cafeteria, if it is one that the students are using, is every bit as much an educational activity, as an athletic program.

The CHAIRMAN. Well, I appreciate your including it, and I assume therefore, it also is included in the proposal that you support. And, therefore, it does reach beyond educational activities, and consequently, you would endorse that extension?

Mr. REYNOLDS. I am not sure I said that, I said that I thought that——

The CHAIRMAN. Well, you just said that according to the record—according to what I heard.

Mr. REYNOLDS. That's what you just said I said. What I said was that a cafeteria activity of an educational institution is one that would fit within the concept of an educational program or activity, to the same extent as an athletic activity would be an educational activity.

The CHAIRMAN. Let me yield. I think I have more than used my 5 minutes. We are going to try to adhere as much as possible to the 5-minute limitation. If the Chair did exceed it, I will try to limit myself in the future. I will call on the members in the order in which they came in. Mr. Sensenbrenner. I think that you were third. I believe that Mr. Gunderson was first.

Mr. GUNDERSON. Thank you, Mr. Chairman.

Mr. Reynolds, I want to thank you for your contribution. I want to confess to you, with no disrespect, that I have never been big on lawyers, and legalese, but I think this whole debate is extremely important and we need some help from those of you who have expertise in this area.

The first question I have concern your indication that the *Grove City* decision seems to be consistent with the congressional intent in title IX. You stated this in your statement, is that correct?

Mr. REYNOLDS. That's correct.

Mr. GUNDERSON. How then do you respond to the fact that the Department of Education has apparently suspended actions on about 60 pending title IX cases, as a result of the *Grove City* case? What does that mean?

Mr. REYNOLDS. Well, Mr. Singleton is here, and I think he can probably better answer that question. My understanding is that after the *Grove City* decision there was a reassessment of enforcement authority, and my understaning is that there was some change, although not very much, that resulted from that assessment.

But your question, as I understood it, was whether I had indicated that the *Grove City* decision was consistent with the congressional intent.

Mr. GUNDERSON. Yes.

Mr. REYNOLDS. And I——

Mr. GUNDERSON. But I assume the departments are all enforcing congressional intent in their regulations.

Mr. REYNOLDS. That may be where we are having a little bit of a problem.

Mr. GUNDERSON. OK. Let me go on, if I might. You have indicated that you perceive H.R. 700 as being quite expansive from what would be necessary to make restoration of the pre-*Grove City* ruling.

If you were, in your capacity, as I suspect you would be, called upon to establish the guidelines and direct the different agencies to develop rules and regulations to implement H.R. 700, should it pass and become law, would your recommendations be expansive, similar to your testimony, or would they be more restricted, more in line with past law, or past interpretation?

Mr. **Reynolds.** That would be quite a task. I think the first thing I would have to do is to get rid of the existing regulations in their entirety, and start from scratch. From there it seems to me there is a framework that is laid out in my testimony as to the relevant considerations that one would have to take into account. Clearly, given the existing regulations and given the new definition of "program or activity" in H.R. 700, there is an awful lot of contradiction and inconsistency and confusion that would develop, if we were to leave in place the existing regulations.

As one example, the definition of "recipient" is wholly inconsistent with the definition that comes out of "program or activity" for "entities," and I have not been able to figure out anyway that one could square the two.

So, I think the task would be a very difficult one. I suspect that my testimony outlines the kind of framework that one would have to use. My own sense is that it would necessarily require a complete revamping of the regulations.

Mr. **Gunderson.** I share your concern about clause No. 4 in each of these sections, which simply defines program and activity "as any other entity determined in a manner consistent with the coverage provided in 1, 2 and 3."

Could you shed any light to us as to how you, in your present capacity, would try to interpret or adopt regulations for that area?

Mr. **Reynolds.** I have done the best I can do with my prepared statement, raising what I think are some very real concerns with trying to treat coverage of an entity, using the language "in a manner consistent with." I don't think I am capable, right now, of being very helpful, in suggesting how you would better define that through regulations. It is a very elastic phrase and can stretch about as far as anyone would care to stretch it.

Mr. **Gunderson.** Finally, you indicate that Senator Dole's bill properly restores the equal rights commitment in the area of education, prior to the *Grove City* ruling. Is that correct?

Mr. **Reynolds.** That's correct. I think it does. I would say that Senator Dole's bill certainly removes whatever concerns were there with regard to title IX and the issues related to sex discrimination in educational environments. It is fully responsive to, and I think goes much beyond, those concerns.

But the title IX issue, qua title IX, is certainly removed by both of these bills.

Mr. **Gunderson.** Could you provide me, if not this committee, with your recommended language that would be similar to the Dole bill, to deal with the other three areas of potential concern the Age Discrimination Act, the Rehabilitation Act, and the Civil Rights Act—in line with the Dole philosophy of being no narrower, or no more expansive than pre-*Grove City*?

Could you and your Department provide us some language that would fit that role?

Mr. **Reynolds.** We would certainly be happy to work with you on that, Congressman Gunderson.

Mr. **Gunderson.** Thank you, Mr. Reynolds.

Mr. **Reynolds.** I think that the Dole bill is a pretty good effort at that.

The **Chairman.** Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

Good afternoon.

Mr. REYNOLDS. Hello, Congressman Conyers.

Mr. CONYERS. We were back here almost a year ago, going through the same issue, same witnesses, almost the same questions. I was just reading our exchange from last year, let's see, that was May 9 through 22 of last year. And the question always revolves around what did the Congress mean, assuming that we don't speak so clearly.

We voted on this last year, we debated it, in all the committees. We restated our intent, which is pre-*Grove City*. We have gone through all of the arguments. You used some of the same language in attacking the bill last time—you didn't like the title of it, and you thought it was overexpansive.

We have gone back and we have recapped it again, and we come back again, and we don't meet your expectations. It is almost like Mr. Reynolds versus the world, that it is the Congress that can't get it right, we can't even tell you, year after year, what our intention is, merely to go the pre-*Grove City* situation and not any further.

And you keep telling us, or reading into it that we are exceeding it.

So, then the two chairmen brought in your former—the people that worked in your job before, as Assistant Attorney General, from both administrations, they reassured us, page by page, that we were on the right track. We had a vote in the House, we have 46 sponsors, sir, in the U.S. Senate right at this moment.

The bill passed the Congress by 375 to 32, and we are now here again, realizing that we are in disagreement.

Now, Drew Days brought this into the clearest focus for me, by pointing out that 601 and 602 has court support. The nexus between the discrimination and the termination would be made through a hearing process. The *Seminal* case interpreting section 602 is the *Board of Public Instruction of Taylor County* v. *Finch,* which was decided by the fifth circuit court in 1969.

The teaching of that case, he went on to say, made clear that 601, which is coverage and scope, covered the entire school district, but under 602, the enforcement provision, HEW could not terminate Federal funds for the adult education program, because there was no finding of a violation in that activity, but HEW could cut off funds to elementary and secondary schools, where a violation was found.

In other words, Mr. Chairman, there is an existing body, not only of administrative law and administrative practice, but of court interpretation which circumscribes the fears that have been voiced last year, and are now being voiced today.

And I ask you, would you support the congressional intent, whatever it—last year, do you remember that, and you agreed that you would. And so we have been through the intent every year, with a new collegial body, you and I go through this debate again.

What will it take for us to persuade you that the congressional intent is nothing more than to go back to the pre-*Grove City* situation which the Supreme Court drasticly changed?

Mr. **Reynolds**. I think I could be persuaded with enactment of the Dole bill here in the House and in the Senate.

Mr. **Conyers**. But we keep passing H.R. 700, and its like, sir.

Well, let me ask you this, maybe it is because you had something to do with the *Grove City* case coming to court in the first place. Do you remember your office's participation in the administration decision to argue that title IX is limited by *Grove City?*

Mr. **Reynolds**. I certainly participated in the *Grove City* case at all stages.

Mr. **Conyers**. Yes. Didn't the Supreme Court take a position that was argued by the Solicitor General, that it was asked to take in *Grove?*

Mr. **Reynolds**. It did.

Mr. **Conyers**. Right. So maybe that is the ideological problem that you keep imputing to us. This isn't ideological, sir, it is a bipartisan effort, and it always has been. We don't have 375 Democrats in the House.

But the point that I am trying to make is that we are trying to persuade you to follow the congressional intent, and we state it, we bring up all of the civil rights people, and it doesn't happen to work.

On page 1 you tell us that you are not here to detail the Justice Department's remarkable record since 1981 of civil rights enforcement on behalf of all Americans.

Now, if there is anybody in the country that really believes that we haven't retrogressed in the field of civil rights—you know, here again, it is Mr. Reynolds versus the entire conceptualization of most people, not only in the Congress, but everywhere, it is widely acclaimed, all the witnesses here so far have said that, rather feelingly, that there is a slippage that is going on. And you tell me that there is advancement going on.

Mr. **Reynolds**. I must have misread the election returns.

Mr. **Conyers**. You read the election returns, but I am reading what the people of America are saying about the progress of civil rights.

Mr. **Reynolds**. That is what I thought I was saying, too. There are only 49 states.

Mr. **Conyers**. Well, I am telling you that the election returns don't determine the congressional intent of civil rights laws. And I think it is a mistake for you, who are not politicized and are in the Federal Government executive branch, to keep explaining to people who have to go out and get reelected, you didn't get one vote to get that job. And I have to get reelected every 2 years, and I happen to know what the people are thinking, in at least the First District of Michigan, and I think across the country.

Mr. **Reynolds**. Well, I wasn't trying to suggest, Congressman, that we are dealing with a political issue up here. It is for Congress to make the determination in its judgment as to what the law should be in this area, or any other area.

I have told you before, and I will tell you again, that when that judgment is made, congressional intent will be enforced to its fullest. We are about the business now of trying to discern what the congressional intent will be, with regard to legislation in this area.

I have been asked to come up and testify as to why I believe H.R. 700 goes far beyond a restoration of pre-*Grove City* law.

If we disagree on that, and I understand we do, that's fine. And there are other people who will testify, and the judgment will have to be made by all of the members. I don't think that is any reason to suggest——

Mr. CONYERS. Well, all I want you to know is congressional intent is being reported to you last year and this year——

The CHAIRMAN. Mr. Conyers, could we move on? We will probably get back to you very soon. Thank you.

Mr. Sensenbrenner.

Mr. Tauke, who came in second is not here, so you are next.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

I think that the major debate that resulted in the defeat of the bill last year was whether or not last year's bill actually restored the law to pre-*Grove City* status, or actually expanded on what was the pre-*Grove City* status.

And it seems to me that that same debate is being repeated here in regards to H.R. 700. I think if we want to pass a bill that overturns the *Grove City* case, which I, personally, want to do, we are going to have to get some pretty accurate answers to the central question of whether H.R. 700 does expand the law, prior to pre-*Grove City.*

I think there are three areas, and I would like your comments on each of these three. One, in the education area is whether a student, or whether a university that does not accept any sort of Federal funds, but which accepts students that receive guaranteed student loans, would be brought in under the coverage of H.R. 700?

Second, the difference in the expansion of coverage between the public sector and the private sector?

And, third, whether the pinpoint language that is contained in H.R. 700 is merely codification of the procedure that was utilized administratively before *Grove City,* or whether it expands upon what those procedures were?

And I would like your answer to each of the three of those questions.

Mr. REYNOLDS. I think that H.R. 700 would, as I understand the first question, cover the Grove City situation, where the college received no Federal funds directly, but enrolled students that received Federal grants.

Mr. SENSENBRENNER. Is there any dispute over whether that restores the law to where we thought it was before *Grove City*?

Mr. REYNOLDS. I think——

Mr. SENSENBRENNER. It seems to me that everybody agrees on that.

Mr. REYNOLDS. I think that there are those who would argue that point. But my own view is that the Supreme Court properly read the congressional intent through the legislative history of title IX, and that that is, indeed, what was originally intended, by the law, pre-*Grove City*—that was the proper interpretation.

Mr. SENSENBRENNER. OK, now, how about the difference between the coverage of the private sector, against the coverage of the public sector?

Mr. Reynolds. Well, H.R. 700 sets up a difference in coverage of considerable dimension, in both the private sector and the public sector. I believe that the coverage is more expansive than the pre-*Grove City* coverage.

But beyond that, I think that it is accurate to say that the H.R. 700 bill, itself, has a greater coverage in the private sector, than in the public sector, as the bill is crafted.

Mr. Sensenbrenner. Is there any difference in the coverage, prior to the *Grove City* decision, as you understand it?

Mr. Reynolds. No, I think it was the same.

Mr. Sensenbrenner. Finally, the question that I want to ask is the pinpoint language in H.R. 700 merely a codification of what was prior administrative practice, or is there something different involved in it?

Mr. Reynolds. Well, the pinpoint provision in H.R. 700 is broader than the law pre-*Grove City*.

Mr. Sensenbrenner. In what respect?

Mr. Reynolds. Well, pre-*Grove City* the pinpoint language was coextensive with the coverage, or as they said in *North Haven*, program covered was the program subject to funds cutoff in whole or as to some part. The law, pre-*Grove City* was, indeed, what the *Finch* case—that you referred to, Congressman Conyers, had indeed said it was.

In the *Finch* case, dealing with a school district, the coverage was the program that was involved—the funded program under Impact Aid—which was the school district, but the cutoff was only applied to a part of the program, because it was only that part where discrimination existed.

So, under programmatic coverage, the pinpoint provision was that part of the program that was discriminatory.

Mr. Sensenbrenner. How do you interpret the pinpoint provision in H.R. 700?

Mr. Reynolds. Well, now the pinpoint provision is necessarily much broader. It is broader because it basically talks in terms of the funds that "support noncompliance," and it is unclear, at least from the statute and from colloquy—this is language that was in the bill before, so I mean the colloquy of last year—it is unclear what is meant by supports noncompliance".

In other words it is unclear how directly the funding has to be related to the discriminatory activity, as opposed to the funding that goes to the entity which has the discriminatory activity in some part of it.

So, it is a more expansive kind of a cutoff provision.

Mr. Sensenbrenner. Finally, I would like to explore the thinking that you had in your prepared statement, that in terms of that part of the allegedly expansive coverage, where an entity does not receive any Federal funding, that H.R. 700 is really a toothless tiger, in that there are no Federal funds to cutoff, in case there is noncompliance.

Is there anything else that you see in H.R. 700, that would allow the Federal Government to go after one of these entities that does not receive direct Federal funding, with any kind of injunctive action, or legal action?

Mr. **Reynolds**. You say other than the—what was your exception, the fourth category?

Mr. **Sensenbrenner**. Well, this is the fourth category, where an entity did not receive any direct Federal funding, so obviously, if there is noncompliance, there are no Federal funds to take away.

Is there any other alternative that the Justice Department would have, in this instance, injunctive action, or other legal action?

Mr. **Reynolds**. I think that the bill will contemplate that, as to discrimination in a nonfunded portion of another entity, there would be the ability to enjoin the discriminatory action.

Mr. **Sensenbrenner**. Is that an expansion of what the existing law is?

Mr. **Reynolds**. Well, the existing law only has coverage as to those programs that are funded. Therefore, the injunction would only be in the funded area. So, to that extent, H.R. 700 is an expansion to the extent that you can enjoin activity in a nonfunded area.

Mr. **Sensenbrenner**. Thank you very much.

The **Chairman**. Mr. Hayes.

Mr. **Hayes**. Mr. Chairman, I have two questions. And I am going to operate within the 5-minute timing constraints, but before raising the two questions, I must raise this statement—make a statement that was part of the reference on page 7 of the report that we have here.

I find it hard to digest. I find it both disturbing and offensive, Mr. Reynolds, that this administration can come here today and say that the problem of discrimination is like a gnat. I think your statement reveals, all to well, how unimportant civil rights laws are to you, and the administration which you represent.

I will never forget, nor will millions of other Americans, that it was these very laws which have given access to education and a decent place to live, and some health care—and we are not talking about a gnat, but the basic notions of fairness and justice on which our country is based.

Now, my two questions, my first one is on page seven, on the same page as the reference to the gnat. Your testimony on that page—in your testimony you refer to H.R. 700 as a response to that title IX on the ruling. As you noted, the *Darrone* case was decided at about the same time, and applied the same program-specific coverage to section 504 of the Rehabilitation Act of 1973.

Since this is the case, how can you possibly call this a title IX only problem, and thereby limit your remedy to title IX?

Mr. **Reynolds**. Well, Congressman, that reference, I had and the point I was making, is that we have, from the outset, focused on the *Grove City* decision as being the cause for additional legislation. That has been the articulated need that everybody has given. And *Grove City* was a case that dealt only with title IX.

It was in those terms that I was saying that a discrete problem in a single Supreme Court case that is the focal point of this legislative effort was what I likened to a killing of a gnat with an elephant gun.

I was not referring to the problem of discrimination in this country, nor the need to deal with it effectively, or comprehensively.

So, I don't think it is a correct characterization of my statement to say that I was likening the problem of discrimination in this country to a gnat. You are right that the *Darrone Case* was decided at the same time as *Grove City,* and has a problematic interpretation to section 504.

What I was addressing was what I have heard heretofore as being the area of need that occasioned the legislative activity that we had last year, and have renewed this year in both Houses.

Mr. HAYES. My second question, in *Grove City* the Supreme Court, without any apparent difficulty, held that Federal financial aid to students constitutes financial assistance to the colleges, knowing that we have little trouble concluding that title IX coverage is not foreclosed because Federal funds are granted to Grove City students, rather than directly to one of the colleges or educational programs.

This conclusion is consistent with prior enforcement practices. Can we then now regard the issue of whether schools, whose students receive Federal aid, as being resolved?

Mr. REYNOLDS. I think the Supreme Court resolved that. That was the position the Justice Department had argued from the outset, and we prevailed on that in the Supreme Court.

Mr. HAYES. No further questions, Mr. Chairman.

The CHAIRMAN. Mr. Bartlett.

Mr. BARTLETT. Thank you, Mr. Chairman.

For one, I, and I think most Members of this Congress, have noted a change and some coming together of the positions between the administration and those advocates of H.R. 700 in the Congress. I was one who voted for the civil rights bill last year, although along with many—I will trade microphones with Mr. Penny, he couldn't get his to work at all this morning—although along with many, I had some reservations that perhaps the bill was constructed in a way that was more broad than had been originally intended.

And so I commend the Attorney General for his willingness to approach the issue the way he has. And, hopefully, we will come up with a bipartisan bill and legislation that most can agree to.

It seems to me, from listening to the testimony and reading the vast material that the disagreement seems to fall mainly into two areas in comparing the Dole bill and H.R. 700. And that may be a vast overstatement or oversimplification. But the first is in the area of the pinpoint remedy.

The chairman of the committee this morning sponsored the legislation. When he began these hearings, he stated that it does not alter the remedy of fund termination, it remains narrow and pinpointed.

Other material, just simply the congressional objective analysis of this bill, or at least the summary, states much the same thing in one of the documents. The bill also includes last year's amendment to the enforcement section of the four statutes, which is designed to ensure the pinpointed fund termination remedy is retained.

And, Mr. Reynolds, your testimony seemed to indicate that you thought—if you could recharacterize it for us, do we disagree as to the result we are trying to achieve, or do we disagree as to what the language means?

Do you believe, for example, that the remedy should be pinpointed to that institution? As I understand the *Grove City* case, it pinpointed the remedy to the fund termination, only in the student loan office.

Now, do you advocate a bill that would only do that, or do you advocate a bill that, in the case of a university which accepts students with guaranteed student loans, that their entire university would be covered, and a termination of all Federal funds would be a remedy?

Mr. REYNOLDS. That's correct. Under the Dole bill, and our understanding of the legislation, as we supported it, if the education institution receives funds, the termination provision would allow for those funds to be cut off, even if discrimination was in some area of the university that was not funded.

Mr. BARTLETT. In other words, what the Dole bill does is say the program or activity will pertain to the entire education institution, and the pinpoint provision would cutoff the funds to the education institution.

So, it sounds like you are saying the same thing as the proponents of 700, or could you enlighten us as to why there is a disagreement?

You are saying that you would advocate that if a university accepts students who receive Federal assistance, that you would advocate that they not only be covered in the four civil rights statutes, but that they also have, as a remedy, the termination of all Federal funds to that university?

Have I overstated your——

Mr. REYNOLDS. Well, the pinpoint provision that exists in the law now, and will be the one that will continue to exist, would allow for cutoff of funds to the education institution, or to any part of that education institution.

I think that what usually happens in the real world with fund cutoff, is that there is a balancing that goes on, as to whether it is the most effective remedy to cutoff funds, and therefore, perhaps, deprive a lot of other innocent students of educational opportunities, or to take other measures. In that balance, it may well be that some fund cutoff would be appropriate, and some would be inappropriate.

But the possibility of a fund cutoff to the entire educational institution would be available under the Dole bill.

Mr. BARTLETT. Well, I would concur with what Mr. Gunderson said earlier, that perhaps what we should do is to work with you and the sponsors of H.R. 700, and since we both seem to have the same intent, as far as the pinpoint remedy, to come up with language we can agree on that would do that.

The second difference is that the Dole bill would only apply to educational institutions. I suppose my question is, Do you believe that there are any implications for other institutions, or other recipients of Federal funds, of the *Grove City College* case, if we don't take action in Congress, prior to that?

That is, by leaving the question—do we leave the question open by not taking action, and lead to other litigation such as *Grove City,* in the future? Do you believe there are other implications to the *Grove City* case, outside of educational institutions?

Mr. REYNOLDS. Well, I think that certainly the question is available, and will be raised, indeed it is in court, under 504 and title

VI, and the Age Discrimination Act, as to the extent of coverage. It is in those areas that there are differences as to whether they are programmatic, or institutionwide.

I think the courts will resolve those. In the *Conrail* case, the court has said that 504 is programmatic, and that the coverage should be on a program basis.

Mr. **Bartlett**. Thank you, Mr. Chairman.

The **Chairman**. We do have a vote pending. The Chair is going to take a recess, a 5-minute recess.

You will be recognized when we return.

We are in recess for 5 minutes.

[Recess.]

The **Chairman**. The committee is called to order.

At the time the recess was taken Mr. Bartlett was questioning Mr. Reynolds.

You had about 30 seconds left, Mr. Bartlett. I will give you the privilege of expanding that somewhat.

Mr. **Bartlett**. Thank you, Mr. Chairman.

We were at points which I think go to the nexus of the bill.

Mr. Reynolds, I wonder if you could clarify, a minute ago we were talking about the termination provisions or the fund cutoff in those instances of noncompliance.

Can you clarify the meaning of the termination provisions, as you understand them, that is the pinpoint remedy for termination in existing law, in the Dole bill, and in H.R. 700, tell us where—not in the language, but in the effect of what the differences are.

Now, let me be specific. Under each of these three bills, if the colleges were accepting students with Federal assistance, and was found to be discriminating, under each of these, what funds could be terminated? Could the funds for the entire university be terminated, for example?

Mr. **Reynolds**. I think that the cutoff provision in the Dole bill is the same as under the existing law. That cutoff provision says that if there is discrimination that is found to exist, in any program, that the cutoff will be applied to that program, or any part thereof.

That would be true under the Dole bill cutoff provision, it would apply to any discriminatory program in a college or university, or part thereof that is funded, one could cut off the funds.

Mr. **Bartlett**. Mr. Reynolds, could I interrupt you? In laymen's terms could you tell us what any part thereof means? Does that mean the whole university?

Mr. **Reynolds**. No, I think that what that means is that if you have an athletic department, and you have discrimination with regard to one of the athletic programs, but not as to other parts of the athletic programs, that the Dole bill would permit on fund cutoff of that part of the athletic program where there was discrimination.

Mr. **Bartlett**. But not for the entire athletic program?

Mr. **Reynolds**. I think that under the pinpoint provision the fund cutoff would go to those funds that are funding the discrimination.

The **Chairman**. May I ask, is that not true in both bills?

Mr. **Reynolds**. I think that in H.R. 700 there is some ambiguity regarding fund cutoff. I think that one might certainly read it that way. I think at the same time that because it says "supports noncompliance," if you could say that some other funds from the university were supporting that athletic program that was discriminatory, that the argument could be made that you would not only reach the funds directly going to that athletic program, but also, other funds in the university that could be argued to support the noncompliance.

The CHAIRMAN. Would you be satisfied with legislative intent on that issue, rather than engage in a debate on that?

Mr. REYNOLDS. I think the legislative intent is to make——

The CHAIRMAN. Your conception of it is different from ours, in that the intent is the same, and in our opinion, there is no difference.

Mr. REYNOLDS. I would suggest that if the intent is the same, that there would probably be no need to amend any of the language that exists, and that the easy way to get to the same intent is to leave it as it is under the existing law—simply leave the language as it is in the existing law.

The CHAIRMAN. Well, legislative counsel advises us that that would not be correct, and that the way we have it in the proposal now is the correct way, and it arrives at the same point that you have made with respect to the other bill.

So that we are stating that there is absolutely no difference. If there is an ambiguity, that you are reading an ambiguity into it. It is not the intent.

And I am simply saying that we will establish the legislative intent along the way, so, in that regard, we probably will satisfy you, I hope.

Mr. REYNOLDS. Mr. Chairman, that certainly is something to work with. Certainly the best way to establish legislative intent is through statutory language.

Mr. BARTLETT. Well, Mr. Chairman——

The CHAIRMAN. Mr. Bartlett.

Mr. BARTLETT. I appreciate the chairman's questions, because I think it is important that we clarify the intent of the committee, and of the administration. And I think we have helped. But I do think that while we have time, and we have some time, it could well be that it would be better for us all to agree to make both the legislative intent and the legislative language precisely coterminous.

Let me ask a question on the bill, on page 3—and the chairman, or Mr. Reynolds may wish to respond in terms of the thinking about it, on line 20, page 3. I suppose the provision that we are debating, which is the pinpoint remedy of H.R. 700, line 20, of page 3, inserts the words "assistance which supports", instead of the words "program or part thereof."

Now, the Dole bill uses the words "program or part thereof," as does the existing law. And I suppose my question, as a layman and a policymaker, is I am unclear on what "assistance which supports" means, or is intended to mean.

Mr. Reynolds, could you tell us what it means to you? And if you would like to followup, in terms of a later written brief, I think it would be helpful. The chairman or the legal counsel of this committee may also wish to clarify it, because I am confused as to what those words mean, that are different from "program or part thereof".

Mr. **Reynolds**. Well, as I understand it, there may not be a difference. I think that the concern is that by changing the language, H.R. 700 certainly raises a suggestion, and maybe more than a suggestion, that funds that go to some other part of the university, because of the way that the university keeps its books, or accounts, or what have you, could be argued to support some activity in another program, in addition to funds that are going directly to that program.

If that is the case, and the program that we are talking about is discriminatory, then the language, I think, would lend itself to an interpretation that you cut off not only the funds going directly to that program, but also some funds that are arguably lending some indirect support to it.

Now, if that is not the intention—and it is a clear statement of intent that we are discussion as to those funds that are funding the discriminatory activity, then I think that matter can probably be resolved.

My sense is the easiest way to resolve it is to return to the language that is in the law right now.

I would be more than happy to submit to the committee a letter that will try a little better, perhaps, to spell out some of the problems that might be lurking, if, indeed, the supports language is retained in the bill.

Mr. **Bartlett**. I think that would be helpful, and I would be happy to yield.

The **Chairman**. Would the witness submit such a document to the committee? And it will be a part of the record at this point.

[Response by Mr. Reynolds follows:]

U.S. Department of Justice,
Civil Rights Division,
Washington, DC, April 17, 1985.

Hon. Augustus F. Hawkins,
Chairman, Committee on Education and Labor, House of Representatives, Washington, DC.

Dear Mr. Chairman: During my testimony on H.R. 700, the "Civil Rights Restoration Act of 1985," on March 7, 1984, I agreed to supplement my remarks. I would like to take this opportunity to discuss H.R. 700's ambiguous approach to fund termination, to address concerns raised before this Committee by Dr. Arthur Flemming, and to reiterate the Administration's support for the "Civil Rights Amendments Act of 1985" (H.R. 2061, S. 272). I request that this letter be included in the record of your Committee's hearings.

1. *Fund Termination.* The enforcement provisions of each of the four statutes addressed by H.R. 700 provide for an administrative process leading to fund termination. H.R. 700 would alter the fund termination remedy by expanding its scope "to the particular assistance which supports such noncompliance." Currently, the statutes limit fund termination "to the particular program, or part thereof, in which such noncompliance has been so found." 20 U.S.C. § 1682 (title IX). The limitation of fund termination only to that discrete part of a program where the discrimination occurs is referred to as "pinpoint" termination. In *North Haven Board of Education* v. *Bell*, 456 U.S. 512 (1982), the Supreme Court concluded that the coverage and fund termination provisions of title IX are coterminous and thus both program specific.

On March 7, Congressman Bartlett and I engaged in an extended discussion of the fund termination issue. I had testified in opposition to H.R. 700's amendment to the statutes' fund termination provisions on several grounds. The amendment introduces a new, undefined phrase into the statute, a phrase that is ambiguous and likely to prove troublesome in application. For example, it is unclear whether Federal funds that "free up" other funds to support noncompliance in a particular part of an entity could also be terminated. Even if this particular expansion of the fund termination provisions is averted, however, it remains unclear what funds "support" noncompliance in an entity and whether funds must be directly traceable to the noncompliance in order to be terminated. Thus, if a college's federally funded Department of Physics discriminates against women, justifying the termination of Federal funds to that Department, does the Department's use of the college's nondiscriminatory, federally funded computer center require termination of Federal funds to the latter center? In other words, under H.R. 700, do the Federal funds used by the nondiscriminatory computer center "support" the noncompliance in the Department of Physics? The plain language of the proposed change is susceptible to multiple interpretations and the bill's sponsors have failed to provide adequate guidance on interpretation of the new phrase. It is highly likely to result in an expansion of an agency's fund termination authority.

Several members of your Committee have suggested that my concerns with H.R. 700's revision of the long-standing fund termination provision can be met by discussion in the legislative history. I think that the sounder, and decidedly preferable, approach is to retain the existing statutory language. There is simply no need to amend the statutes' fund termination provisions. The Supreme Court's decision in *Grove City College* v. *Bell*, 104 S. Ct. 1211 (1984), did not alter the scope of the pinpoint termination clause. The pinpoint clause has always been narrowly interpreted. The plain meaning of the fund termination provision, its legislative history, and consistent judicial interpretation have resulted in a clear understanding of fund termination.

Sponsors of H.R. 700 and S. 431, its Senate counterpart, have stated that this amendment to the fund termination provision is designed to ensure that fund termination will remain narrowly targeted. 131 Cong. Rec. S1303 (daily ed. Feb. 7, 1985) (remarks of Sen. Kennedy); 131 Cong. Rec. H135 (daily ed. Jan. 24, 1985) (remarks of Cong. Richardson). Because H.R. 700 defines program or activity so expansively, they argue that, without some alteration of the statutes' current pinpoint language, a greatly expanded interpretation would necessarily be given to the scope of the termination clause as well. *See North Haven Board of Education* v. *Bell*, *supra* at 537 (Federal agency's regulatory coverage is conterminous with agency's authority to terminate funds). Thus, the sponsors of H.R. 700 assert a need to amend the fund termination clause simply to insure that its "pinpoint" application remains the same. It is far from clear that H.R. 700's proposed language accomplishes that intended result. Rather, as I have mentioned, the more likely consequence under the new "supports" phrase is that it will be interpreted as expanding the scope of the termination authority.

Plainly, retention of "pinpoint" defunding is best accomplished by retaining existing statutory langauge that has already received judicial scrutiny, been authoritatively construed, and is not only well understood but also generally accepted by all as the most sensible way to handle termination. The Supreme Court's decision in *North Haven* is perfectly consistent with this "no change" approach. The Court did not there read the "or part thereof" phrase out of title IX's fund termination language. Thus, while there is, and understandably must be, a direct relationship between a Federal agency's regulatory authority and its fund termination authority, the "or part thereof" language imposes on the defunding agency the responsibility to limit fund termination orders to the discriminating "part" of the covered program.

In sum, the surest way to retain the narrow scope of the fund termination clause is to retain the statutes' existing language. If the existing language is changed, it is likely that the scope of fund termination itself will be changed. One of the prinicpal strengths of the Civil Rights Amendments Act of 1985 (H.R. 2061, S. 272), Representative Lungren's and Senator Dole's bill to overturn part of the *Grove City College* decision, is its retention of the existing pinpoint language in the fund termination provision. I once again urge this Committee to endorse that bill's approach to coverge and fund termination.

2. *Flemming Report*. Arthur Flemming in his testimony before the Committee referred with approval to a document entitled "Injustice Under the Law" prepared by five civil rights organizations. This document presents a series of examples of how the *Grove City* decision has purportedly diminished the breadth of Federal civil rights protections. As I emphasized in my testimony to the Committee, the Administration strongly supports the idea of institutionwide coverage of educational institutions; and we have endorsed the Civil Rights Amendments Act of 1985, a bill introduced by Representative Lungren and others in the House of Representatives and by Senator Dole and others in the Senate, that achieves precisely that result. All of

the examples and hypotheticals given in "Injustice Under the Law" that involve educational institutions present problems that would be remedied just as fully by H.R. 2061 as by H.R. 700.

With respect to the examples and hypotheticals not concerning conduct at educational institutions, some illustrate gaps in coverage that existed even prior to the *Grove City* opinion—for example, the failure of educational grants to a State correctional center to provide section 504 employment protection to a corrections officer working outside of the federally assisted program. I also stress that coverage under the four cross-cutting civil rights statutes should be considered in light of other Federal and State civil rights laws such as title II (public accommodations), III (public facilities), and VII (employment) of the Civil Right Act of 1964, the Fair Housing Act of 1968, sections 1981, 1982 and 1983 (the post-Civil War civil rights statutes), and State and local civil rights laws. These laws add to the rich mosaic of antidiscrimination law in this country and together provide a comprehensive network of legal protections against unlawful bias and prejudice.

The current effort in Congress to enact legislation responsive to the Supreme Court's program-specific interpretation of title IX in *Grove City* suffers from an overly ambitious attempt to expand coverage of the four cross-cutting civil rights statutes to any and every conceivable activity, private or public, whether funded or nonfunded. Not surprisingly, the formulation being considered in H.R. 700 to achieve that end is sufficiently clear in some of its parts to provide for a vast expansion of Federal coverage, yet in other parts is so vague, imprecise, and fraught with ambiguity, that an even further expansion of Federal authority, resulting in virtually unlimited coverage of the private sector, is a distinct possibility.

Despite extended hearings, there has been no showing made of "demonstrated need" for so extravagant an expansion of Federal oversight and bureaucratic intrusion into all aspects of public and private life. Indeed, given the comprehensive body of civil right law that now exists, it is exceedingly doubtful that any such showing could be made. Moreover, where a need does exist for some additional legislation, it ill-serves the interests implicated to respond in blunderbuss fashion rather than to undertake responsibly to tailor the statute or amendment to meet that need.

For all the reasons stated in my testimony before the Committee, the Civil Rights Amendments Act of 1985 represents just such a carefully tailored approach and more accurately responds to the concerns raised about *Grove City*. It has Administration support and deserves, in our view, support of the whole Congress as well.

Sincerely,

WM. BRADFORD REYNOLDS,
Assistant Attorney General, Civil Rights Division.

The CHAIRMAN. May I next call on Mr. McKernan.

Mr. MCKERNAN. Thank you, Mr. Chairman.

I have been listening with some interest to the bantering that has been going on regarding the construction of various parts of the legislation. As a lawyer, I find that not only stimulating, but interesting. We've also dragged the nonlawyers into the construction of the wording in the statute, and I think that that serves a good purpose.

But I think maybe we also have the cart before the horse, or we can't see the forest for the trees—whatever you want to call it. I would like to ask a more philosophical question in two parts.

One is, since we are talking about legislation, why do you think that the receipt of guaranteed student loans ought to trigger title IX?

Second, why do you think that all programs at that educational institution ought to be included in the prohibition, if title IX is triggered?

Mr. REYNOLDS. Let me just say, so it is clear on the record, that the receipt of guaranteed student loans probably would not trigger title IX. But if a student had a BEOG grant, the Supreme Court has said that would trigger it. There is law on that, and because there is an exemption in title IX for loans of guarantee, the particular item that you talked about, the guaranteed student loan probably would fall out of the coverage of title IX.

Mr. McKERNAN. But I believe in an earlier question you said that you thought that it would.

Mr. REYNOLDS. Well, I think I had in mind, in answering the question—and my mistake was pointed out to me in the break—I had in mind the BEOG grant kind of a financial arrangement, with a student; and I didn't focus on the guaranteed student loan feature of it.

I think that the reason for concluding that student aid is sufficient to trigger coverage of the educational institution which I believe is really the nature of your questions, goes back to a judgment the Congress made when it first passed title IX. It was dealing in that same legislation with BEOG grants, and said very clearly in the legislative histories, as the Supreme Court pointed out, that it was the judgment of Congress that that kind of financing to the students should be considered Federal financial assistance to the institution.

I think that if one were to back off and make a philosophical argument as to whether that is a good, or bad thing, there are arguments to be made on both sides of that question.

But the Supreme Court reached its conclusion on the basis of a decision, or judgment call, that was made by Congress, back when it passed title IX, in 1972.

Mr. McKERNAN. I understand that. What I am asking is whether or not the administration supports that philosophically, or is supporting that interpretation?

Mr. REYNOLDS. Well, the administration is supporting the position that title IX, as intended, as first passed, and as interpreted by the Supreme Court, does tolerate that coverage. And we do not urge, and have not urged that Congress amend the statutes to reverse that.

The only place that we have focused on a change in the statute is with regard to the programmatic versus institution-wide coverage. Our view, in terms of the debate now going on, is that coverage of an institution on an institution-wide basis in the educational context, is something that makes some sense in terms of how educational institutions are run; the cohesive college environment that it is, the way that it operates administratively. That certainly is a legitimate, easily identifiable unit, and as such, in those circumstances, a dollar to the educational institution certainly is something that we think Congress legitimately can say triggers coverage of that institution.

We have some serious difficulties when you get beyond an educational institution, which we all can identify as a rather cohesive single administrative unit, and seek to apply that concept in other areas where it doesn't really have a very comfortable application.

Mr. McKERNAN. You obviously knew where I was trying to take you.

I have some concerns with this legislation, probably in a different area than you do, in that I am not sure that at least as applied to State and local governments, it goes far enough.

I find it difficult to understand why, if a particular part of an eduational institution, or a particular part of a corporation, receiing Federal funds triggers a full application to the whole corporation or the whole educational institution, that a State government, or a local government which also receives for one of its programs, Federal funds, should not also trigger these civil rights statutes for all of that entity as well.

Could you just discuss that, in terms of how you make that distinction between an educational institution and the type of other political entity?

Mr. REYNOLDS. Well, of course, that distinction is one in H.R. 700, which we have not endorsed. And——

Mr. McKERNAN. For an opposite reason that I do, though.

Mr. REYNOLDS. Well, the distinction that we do draw is the one I explained to you, where we have said that we think the institutionwide coverage for the educational institution is appropriate, given the nature of the unit that we are dealing with there.

But that when you try to pick that type of coverage up and move it beyond educational institution, whether in the private sector, or in the public sector, I think you begin to distort considerably the customary and commonsense notion of institution. In doing so, you bring into coverage a whole host of activities that have no relationship to those that are funded, or have no identity to them, or—given the way that statewide systems work, to address your question directly—probably no knowledge even that there is any funding going on.

Mr. McKERNAN. But what is there about the nature of an eduational institution that prohibits discrimination from other aspects of that particular program, but would not apply to a corporation that was receiving Federal grants?

Mr. REYNOLDS. I guess that the best way I can explain it is that in terms of educational funds that are going to an institution that is in the business of education, you can have an identity in the activity that is being funded, and in the kinds of interrelated aspects of the unit that you are working with.

When you get to a State, for example, if you send funds to, let's say a correctional institution, there is no relationship between that and whatever the State is doing in the transportation area, or in a host of other areas.

So, the larger you try to define the unit or the entity, the more removed you get from what is the real intent of the Federal Government in disbursing the money.

The money that goes to the educational institution is subsidizing education within that unit. The money that might go to the State for purposes of building roads does not subsidize educational activities of the State.

And if you were to draw your line around a State as an institution, in the same way as a school, I think you would have two different units that looked dramatically different, and therefore, you are talking about dramatically different kinds of coverage.

Mr. McKERNAN. My time is about up. Let me just ask one final question. What is wrong with the argument that if we believe, as a matter of Federal policy, discrimination is improper, and if we are going to give Federal dollars to a particular entity, regardless of what it uses those dollars for, that the quid pro quo is that there is no discrimination?

I understand all of these distinctions you are making, I have a feeling that they may be distinctions without a difference. But I just ask that simple question, What is wrong with that particular approach to this issue?

Mr. REYNOLDS. I think that to the extent that you are saying that if you are using Federal funds to subsidize discrimination, that that is certainly a legitimate means to reach that end.

But I think if you are using the Federal dollar as an excuse to reach activity that is not subsidized by the Federal dollar, or is not something that the Federal Government is encouraging, or assisting, then what you have done is you have used the excuse of the Federal dollar, really to write legislation that says we are going to outlaw discrimination in all of its features, and in all of its forms, for both public and private, everywhere in the country. Now, certainly, Congress can do that, it hasn't chosen to; it doesn't chose to do it with H.R. 700.

I suspect that that is because the call has been made by the different people who have looked at this issue, that the Congress is not prepared to make that kind of a decision. Certainly it could do that.

I think that that really does raise serious questions as to how far the Federal Government should go, and what its proper role should be. Just as I think H.R. 700 raises such questions.

Mr. MCKERNAN. Is there anybody who would come under H.R. 700, as it is now drafted that you are aware of who would be forced to accept Federal funds, or are all of these——

Mr. REYNOLDS. No, I don't think anybody is forced under H.R. 700 to take Federal funds, and I expect that, in both the public and private sector, if everybody said they no longer wanted Federal funds, H.R. 700 would reach nothing.

Mr. MCKERNAN. So that it is all voluntary application, on the part of the people who would be covered by H.R. 700?

Mr. REYNOLDS. Well, at least so far as H.R. 700 is concerned, I think that is right.

Mr. MCKERNAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Reynolds, in light of that question, let me follow up. Let us state a simple notion, and ask you whether you agree, or disagree.

Do you agree that Federal dollars should not be allowed to subsidize discrimination against minorities, women, the elderly, or the disabled, and if discrimination occurs, should there be a remedy available?

Mr. REYNOLDS. I do agree with that.

The CHAIRMAN. Thank you.

Mr. REYNOLDS. I would include age with that.

The CHAIRMAN. Age; certainly. Thanks for that amendment, it may come in handy.

To further clarify the record, let me state this categorically, because I think that your statement introduced a certain amount of confusion. H.R. 700 does not alter the recipient definition that existed, prior to the *Grove City* decision, or today The definition in the bill is, "program and activity," and does not include "program and activity receiving." The difference between these two versions is to specifically ensure that the definition of recipient in H.R. 700 does not change.

I just wanted to state that categorically for the record, so that it is alongside of the statement that you made in interpreting what the intent was.

Mr. CONYERS. Mr. Chairman, could I——

The CHAIRMAN. Mr. Conyers.

Mr. CONYERS. Yes, I would like to just raise one clarification with Mr. Reynolds. In his testimony earlier he said the Supreme Court has already ruled in a noneducation area that section 504 is program specific; the *Darrone* case.

Mr. REYNOLDS. I believe that is correct.

Mr. CONYERS. OK. Then, what is the Department of Justice's position on title VI?

Mr. REYNOLDS. You mean 504?

Mr. CONYERS. Yes, title VI, in which we are dealing with questions of housing, health, transportation.

Mr. REYNOLDS. My position as to whether that statute is one that is program specific?

Mr. CONYERS. Yes.

Mr. REYNOLDS. I believe that the courts have ruled, so far, every time they have been asked, that it is program specific.

Mr. CONYERS. It is program-specific?

Mr. REYNOLDS. That's correct.

Mr. CONYERS. And it is outside of education. So, the point is——

Mr. REYNOLDS. It is not necessarily outside of education. But it can be outside of education.

Mr. CONYERS. It can be outside of education. It can cover these other areas.

Well, then, why is 700 offensive, because, unlike the Dole bill, it, too, of necessity, as the chairman was indicating, goes outside of education? And it has already been supported by case laws and you cite it, as a matter of fact.

Mr. REYNOLDS. Well, I have given you my views as to what I see as problems with H.R. 700, to the extent that it goes beyond the Dole bill.

I would ask—and I would think it would be something that would be useful for the committee to explore—I would ask the committee to look to what, in the area of racial discrimination, remains unattended and unaddressed in the Federal Code, by reason of the fact that title VI has a program-specific interpretation.

Mr. CONYERS. Well, let's look at this. You support title VI; that can go outside of education. You agree that the Court has already interpreted, in at least one noneducation area, that section 504 is program specific.

H.R. 700 does what the Dole bill doesn't do; it goes beyond education, and yet you agree with the present case law; you agree with the interpretation of title VI, but H.R. 700, because it exceeds the education jurisdiction, you have registered quite a number of objections.

Mr. REYNOLDS. I am afraid I didn't follow that.

Mr. CONYERS. OK, let's do it again.

The Supreme Court, under *Darrone,* has already said that, in noneducation areas, in the 504 case, it is program specific. Title VI, which is enforced by the Department of Justice, can go beyond education, and go into other areas.

Isn't it program specific, according to you, outside of education, title VI? It can be.

Mr. Reynolds. Well, I think title VI is program specific. Yes.

Mr. Conyers. Then what I am leading to now is that here we come with H.R. 700, and you say that because—that you are willing to go along with this, within education, but you are not willing to go along with it in the other areas that can be equally subjected to discriminatory conduct; for example, transportation, health, and housing. Why not?

Mr. Reynolds. Well, H.R. 700 doesn't seek to deal with the problem raised by *Grove City* in the title IX area, in a way that I would agree with, for purposes of institutionwide coverage. It goes well beyond that.

And by the same token, in those areas outside of an educational institution, what H.R. 700 does is go well beyond what even traditional notions of institutionwide coverage might be, outside the area of education.

I think that if Congress is, indeed, interested in drafting a bill that is one that can accurately be described as providing institutionwide coverage, in all of these areas, like the Dole bill does, my sense is that it would be necessary to go back to the drawing board and do some further reworking of H.R. 700. As it now is drafted, it does not even hold the line as to institutionwide coverage as some have maintained was in existence prior to *Grove City.*

Mr. Conyers. But you don't have any objection to institutionwide coverage, when title VI comes in, and you don't disagree with the *Darrone* case.

Mr. Reynolds. Well, those are all program specific; they are not institutionwide. *Darrone* is program specific, title VI is program specific, so those are all cases that are consistent with the program-specific interpretation that the Supreme Court gave to title IX.

The Chairman. I don't seem to have anyone else to call on.

Mr. Reynolds, everyone seems to have had a full opportunity, and again, the Chair would like to thank you for appearing before the committee and to congratulate you on the manner in which you presented your views.

We may disagree with them, but you have ably presented them. We appreciate this opportunity, and we thank you, again, for having appeared before the committee.

Mr. Reynolds. Thank you very much, Mr. Chairman.

The Chairman. Thank you.

The Chairman. The Chair would like to call on one of our colleagues, who has been very patient this afternoon, who has a statement to make.

We will get to Mr. Singleton next.

It is my anticipation that the hearings will not go very long, but at this point, we are very pleased to call on the Honorable Claudine Schneider, Member of Congress, from Rhode Island, one of our most distinguished Members, whose record is outstanding.

It is a pleasure to have her before this joint committee.

Mrs. Schneider, it is your opportunity.

Mrs. SCHNEIDER. I thank you, Mr. Chairman, for enabling me to testify this afternoon. And in the interest of time, recognizing the endurance of Mr. Reynolds, over the last 2½ hours, and the endurance of the members of this committee, and also, because I found your questions so very thorough, I would like to ask unanimous consent that I give you only an outline of my views, and ask that my full statement be included in the record.

The CHAIRMAN. Without objection, it is so ordered.

[Prepared statement of Hon. Claudine Schneider follows:]

PREPARED STATEMENT OF HON. CLAUDINE SCHNEIDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mr. Chairman, I am grateful for the opportunity to testify today in support of H.R. 700, the Civil Rights Restoration Act of 1985. I commend my distinguished colleagues, Chairmen Hawkins and Edwards, for acting expeditiously on this critical legislation, and for their continued work and determination to secure equal rights for all Americans, regardless of race, sex, age or physical handicap.

As most of you here today are aware, I have been working to insure a strong Title IX since coming to Congress in 1980. In November 1981, I first introduced a resolution reaffirming congressional comitment to a comprehensive interpretation of Title IX. While there was no action on this legislation in the 97th Congress, it was reintroduced in the 98th, and passed the House 414 to 8 in November of 1983. Joined by 75 Senators and Representatives from both sides of the aisle, I submitted an amicus brief in the *Grove City* case. On March 1, only two days after the Supreme Court's ruling in *Grove City,* I became the first to introduce legislation to reverse that decision. When it became apparent that my bill, H.R. 5011, did not fully address the potentially disastrous impact of the *Grove City* ruling, I worked tirelessly for passage of H.R. 5490, the Civil Rights Act of 1984, by both the House and Senate. Now, in the 99th Congres, I have set enactment of H.R. 700, the Civil Rights Restoration Act of 1985, as my top legislative priority.

I could go on at great length this afternoon about the effectiveness of Title IX, how it has opened doors of opportunity for millions of American women and girls, how it has changed the course of education in this nation and how it has eliminated the many blatant discriminatory practices which, not too long ago, were considered acceptable, but I believe that the statistics speak for themselves. During the eight years since the enactment of Title IX in 1972, female enrollment in dental schools increased by 101 percent, in law schools by 337 percent, in veterinary schools by 120 percent, and in medical schools by 296 percent. During the same period, the number of women receiving doctorates jumped 83 percent. The number of women participating in intercollegiate athletics rose from 16,000 to more than 250,000 while the percentage of girls participating in high school sports jumped from 7 to 35 percent. In 1972, there were virtually no athletic scholarships for women; by 1980, there were 10,000. Clearly, Title IX has made a difference. Perhaps, Cheryl Miller, the star center of the U.S. women's gold medal Olympic basketball team, put it best when she remarked last summer, "Without Title IX, I wouldn't be here."

Last May, when I testified before these two committees, I voiced my serious concern that *Grove City* decision had taken the teeth out of Title IX. At that time, the Department of Education had already suspended investigation of four Title IX complaints. Today, the number of civil rights complaints placed on indefinite hold by the Department has reached sixty one. I am enclosing, for the record, a list provided me by the Office of Civil Rights of cases closed, narrowed and suspended as a result of the *Grove City* decision. This list is to me conclusive proof that our worst fears becoming true.

First of all, these sixty one cases are not all title IX complaints. As I, and many of my colleagues, have mentioned in the past, the Court's ruling jeopardized three other key civil rights statutes—Title VI of the 1964 Civil Rights Act for minorities, Section 504 of the 1973 Rehabilitation Act for the disabled, and the Age Discrimination Act of 1975. OCR's list includes ten complaints under Section 504, three complaints under title VI, and one complaint under the Age Discrinimation Act. Secondly, we are not just talking about cases where *allegations* of discrimination were made. In several cases, the Department has investigated and *confirmed* discrinimation in programs including student health benefits, athletic programs and facilities, and financial assistance to athletes, but has failed to take action because it has no jurisdiction over programs not directly receiving federal funds. In many of these cases, investigation by the Department has been painfully slowed as funding information is carefully reviewed.

This list is troubling for a third reason. If these are the cases which have been dropped, how many other new cases have been ignored altgother? Since *Grove City* clearly limited the initiative of the Department in enforcing civil rights statutes, we can only begin to speculate how many instances of discrimination are going on unchecked. Furthermore, this list only encompases cases within the jurisdiction of the Department of Education. How many complaints which fall within the jurisdiction of the other federal enforcing agencies have also been affected by *Grove City*? Almost certainly, these sixty-one suspended complaints represent only the tip of the iceberg.

As I see it, Congress must not now renege on its commitment to ensure fairness to American women, the elderly, disabled and minority citizens. We simply can not allow one more dime of federal money to subsidize discriminatory practices or programs. Prompt legislative action is needed to rectify the effects of the *Grove City* decision. We must embrace a commitment to civil rights that transcends party lines. We must once and for all clarify the Federal government's commitment to these four civil rights statutes and ensure their vigorious and enthusiastic enforcement.

The CHAIRMAN. We certainly appreciate your desire to——

Mrs. SCHNEIDER. Well, I, too, often sit on the other side, so I can appreciate the anxiety to move along.

STATEMENT OF HON. CLAUDINE SCHNEIDER, MEMBER OF CONGRESS, RHODE ISLAND

Mrs. SCHNEIDER. Let me briefly give you a little bit of the background history, a bit of the current events, and also, to touch just briefly on some of the technical questions that are being debated or discussed here today.

Back in 1980, when I first came to Congress, I introduced House Resolution 190, reaffirming congressional intent and commitment to a comprehensive interpretation of title IX. That particular House resolution passed with a vote of 414 to 8 in November 1983.

I also submitted an amicus brief in the *Grove City* case, and I was joined by 75 Senators and Representatives. And, also, I was the first one to introduce legislation to reverse the Supreme Court decision on *Grove City College*, 2 days after the Court's ruling.

I have also worked for passage in the House, and in the Senate, of H.R. 5490, the Civil Rights Act of 1984. And I have made the enactment of H.R. 700 a top legislative priority of my own.

Let me say that it was a Republican initiative, Mr. Conyers, and your enthusiasm for this being a bipartisan effort, I think that been reflected by the quality of questions that we have gotten from both sides of the aisle in the hearing this afternoon.

I can go on at great lengths to talk about the effectiveness of title IX, but I think that the statistics speak very clearly for themselves. In the past 8 years, since the enactment of title IX, in 1972, female enrollments have jumped 101 percent in dental schools; 337 percent in law schools; 120 percent in veterinary schools, and 296 percent in various medical schools.

Last May, when I testified before these two committees, the Department of Education had already suspended investigations of four title IX complaints. Today the number of civil rights complaints put on an indefinite hold by the Department is now 61. This particular point was raised by Congressman Gunderson, and I just feel that it is important to reiterate it.

But I would also like to have, by your leave, Mr. Chairman, the opportunity to submit for the record the list of the different cases that have been provided by the Office of Civil Rights, of the various cases that are essentially—that have been dropped.

The CHAIRMAN. Without objection, it will be so ordered.

[Information to be furnished follows:]

55-001-595

MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

WHT 4
WLC 2
LCB 3
BRS
WMS
WKM

DATE NOV 21 1984

TO : William H. Thomas
Regional Civil Rights Director
Region IV

FROM Harry M. Singleton
Assistant Secretary
for Civil Rights

SUBJECT: Nova Univessity, OCR Complaint No. 04-84-2052 -- Request for Opinion Concerning OCR's Jurisdiction in Light of Grove City v. Bell

I have reviewed your memorandum dated October 24, 1984, seeking guidance regarding the jurisdiction of the Office for Civil Rights (OCR) to investigate the above-captioned complaint. My review of the facts recounted in your memorandum reveals no basis for the assertion of OCR's jurisdiction at the present time.

The complainant, a doctoral degree candidate at the Nova University Center for the Study for Administration, alleges discrimination on the basis of his national origin in the grading of his final written doctoral examination. While the Center is a recipient of Federal financial assistance by virtue of the participation of its students in the Veterans Administration student aid program, under the Supreme Court's decision in Grove City v. Bell, the receipt of such assistance, in the form of student tuition payments, would confer jurisdiction only over the relevant institutional component's student financial aid office, with which neither the complainant nor his complaint have any relevant connection in this instance.

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CIVIL RIGHTS
REGION IV

Your memorandum suggests, however, that the Supreme Court's decision in Grove City may have an additional bearing on OCR's assertion of jurisdiction in the case. That suggestion presumably derives from your belief that there is a potentially relevant Department of Education nexus with the institutional component in question -- the eligibility of two of its students for funds under the College Work-Study Program. Your memorandum indicates that although two such students are eligible for College Work-Study funds, neither student has yet succeeded in finding a College Work-Study job.

To the best of our knowledge, there is no precedent -- nor does there appear to be any justification -- for a finding of jurisdiction based solely upon the fact that an institutional program enrolls students who are eligible to receive College Work-Study funds. The primary College Work-Study issue whose resolution remains unclear after Grove City is whether an institutional program which employs, i.e., benefits from the services of, a College Work-Study student becomes subject to OCR jurisdiction solely by virtue of such employment.

In the instant case, no College Work-Study student has rendered services to the institutional component in question, nor is it certain that such will occur in the future. Therefore, OCR has no jurisdiction over the case, and it is presently unnecessary to address any College Work-Study issues raised by Grove City.

ALLEGATIONS IN CASES AFFECTED BY GROVE CITY*

REGION I

	Case	Allegations
1.	Simmons College, Mass. (C) No. 01-84-2005 Title IX/Employment	Complainant alleges that she was illegally terminated on the basis of sex from the position of assistant director of a study program.
2.	Northeastern Univ. (C) No. 01-84-2020 Title IX/Sexual Harassment	Student complainant alleges sexual harassment by a member of the faculty.
3.	Southeastern Mass. Univ. (C) No. 01-84-2025 Title IX/Employment	Complainant alleges that he was not hired for a faculty position because the University favored a female applicant.
4.	Mass. College of Art (C) No. 01-84-2028 Title IX/Student Services	Complainant alleges that the Massachusetts College of Art Security Department discriminated on the basis of sex because they did not respond appropriately when she complained about female students' security problems.
5.	So. Central State College (CR) No. 01-84-6001 Title IX/Athletics - Financial Aid	None. Compliance review.
6.	Yale Univ. (C) No. 01-83-2025 Section 504/Employment	Employment discrimination on the basis of handicap (spinal bifida), re: failure to hire complainant for clerical job.
7.	So. Central Comm. Ct (C) No. 01-84-2010 Section 504/Employment	Complainant alleges discrimination on the basis of handicap (Lupus Erythematosis, a mobility impairment) when she was reassigned and her work station was moved. She also alleged services discrimination on the basis of national origin and handicap because Hispanics and handicapped students were less prone to use her services due to the new location of the complainant's office.
8.	Univ. Mass. Amherst (C) School of Nursing No. 01-84-2024 Title VI/Grading	The complainant, a student in the School of Nursing working toward a BSN degree, alleges that instructors in the clinical area used discriminatory subjective judgments to give her failing grades. The alleged discrimination is on the basis of national origin (West Indian)/race.

* This list follows the order of cases listed as affected by Grove City as of 10/15/84. That list was furnished to Senators Orrin G. Hatch, Jeremiah Denton and John P. East.

Page 2 - Allegations in cases affected by Grove City

Case	Allegations
9. Yale Univ. Center for British Art (C) No. 01-84-2027 Section 504/Employment	Complainant alleges that Yale Center for British Art discriminated against her because of handicap (spinal bifida) by evaluating her work unfairly. She was a part-time clerical employee.
10. N.E. Sch. of Law (C) No. 01-84-2029 Title VI/Grading	Complainant alleges that he was given failing grades in all six first year courses, and that the failing grades were unwarranted; that he was discriminated against because he is black.
11. Univ. Mass., Boston (C) No. 01-84-2031 Section 504/Auxiliary Aids	Complainant, a student, alleges that UMASS, Boston (Harbor Campus) discriminated against her on the basis of handicap (dyslexia) by failing to provide her with auxiliary aids and alternative means for taking examinations.
12. Yale Univ. (C) No. 01-84-2033 Section 504/Employment	Complainant alleges that Yale University Temporary Services referred her to various typing and clerical work at Yale in inaccessible locations. Complainant alleges that she is being discriminated against because of handicap (mobility impairment-uses wheelchair).

REGION II

Case	Allegations
17. Fashion Instit. of N.Y. (C) No. 02-77-0560 Title IX/Employee Evaluation Treatment and Compensation	Complainant alleges illegal denial of reinstatement based on sex in that she was refused full-time tenure as a teacher.
18. Ramapo Central SD, N.Y. (C) No. 02-83-1038 Section 504/Program Services	Complainant alleges hearing-impaired parents were improperly denied auxiliary aids so they could properly discuss problems of sons and daughters.

Page 3 - Allegations in cases affected by Grove City

REGION III

19. Univ. of Maryland (C) No. 03-77-0308 Title IX/Athletics	Complainants charged that women's intramural athletics were undeveloped relative to men's programs. Regarding varsity athletics, it was alleged that women's programs illegally received less support than men's programs relative to publicity, fund raising, coaching quality, fund appropriation, transportation, facilities, equipment and awards.
20. Univ. of Maryland (C) No. 03-81-2028 Title IX/Athletics	Complainants charged the university illegally failed to accommodate female interest by not establishing a women's softball team at the varsity level.
21. Penn. State, Pa. (C) No. 03-81-2036 Title IX/Athletics Denial of Access	Complainant alleges the university illegally denied a request that the university women's soccer club be given varsity status.

REGION IV

22. Univ. of Alabama (C) No. 04-79-2098 Title IX/Athletics	The complainant, alleges that the women's swimming program was deficient in the areas of: opportunity to receive coaching; assignment and compensation of workers; scholarship; recruiting; provisions of housing and dining facilities, equipment and supplies; scheduling of games and practice times; travel and per diem allowances; and provisions for medical and training facilities and services.

Case	Allegations
23. Mississippi College (C) No. 04-76-0050 Title IX/Title VI - Employee Eval., Treatment and Hiring	The complainant alleges that the Mississippi College has no black faculty and staff members and makes no effort to recruit and hire them; that female faculty members are concentrated in the lower level teaching positio and are given fewer opportunities for promotion although they may have the same qualifications as men; that female faculty with the same rank as the males receive less pay; that students are treated differently based on sex.

Page 4 - Allegations in cases affected by Grove City

24. Auburn Univ. (C) No. 04-81-2005 Title IX/Athletics	The complainant alleges women student athlete illegally received less than men in the follo ing categories: general funding; scholarship budget; housing/dining and athletic facilitie publicity; promotion and recognition; equipment and supplies; recruiting efforts; travel expenses and accommodations; pay and benefits to coaches of women's teams.
25. Duke Univ., N.C. (C) No. 04-81-2020 Title IX/Athletics/General Programs	The complainants, who were officers in a student organization called the Association o Duke Women, alleges that "a pattern of discrimination against women (existed) througho the University, especially with regards to women's athletics, housing, and the recruitment of women faculty to serve as role models and support for women students at Duke Unive sity." The complainant further alleged discrimination based on sex in the student heal insurance programs and in the elimination of certain academic programs where women facult are a majority, e.g., the School of Nursing and the School of Education.
26. Dekalb Comm. College (C) No. 04-77-0042 Section 504/Employment	The complainant alleges that his contract as instructor was not renewed for the 1977-78 academic year because of his handicap, petit mal epilepsy.
27. Univ. of Miami No. 04-80-2059 Title IX/Athletics	Complainant alleges sex discrimination again women in the following areas of the athletic program: coaches and administrators of men' and women's programs are treated differentl in terms of salary and work responsibilities facilities for women are inferior; publicit promotion and recognition for women are inferior; no athletic survey of interest has been conducted; athletic scholarships for women have been frozen; there is no support group for women and the women have no assistant coaches; no tutoring or supervised stu sessions are available for women.
28. Vanderbilt Univ. Tn. (CR) No. 04-84-6001 Title IX/Athletics	None. Compliance review.

Page 5 - Allegations in cases affected by Grove City

Case	Allegations
REGION V	
29. Miami Univ., Oh. (C) No. 05-84-2008 Title IX/Athletics	Complainants alleges that fewer sports are offered for women, specifically that the University has no cross country team, and that the women's track team is provided with insufficient coaching services, both in quantity and quality.
30. Ball State Univ., Ind. (C) No. 05-82-2045 Title IX/Athletics	Complainant alleges that Ball State University was not effectively accommodating the interests and abilities of female students and that female athletics were not being provided adequate financial assistance.
31. Ohio Univ. (C) No. 05-79-2127 Title IX/Athletics	Complainant alleges that the women's basketball team was not provided sufficient financial assistance, equipment and supplies, tutoring, travel and per diem.
32. Western Michigan Univ. (C) Title IX/Athletics	Complainant alleges that Western Michigan University discriminates against female athletics in the total athletic program.
33. Univ. of Minnesota (C) No. 05-74-0526 Title IX/Athletics	Complainants allege discrimination against women in the provision of athletic practice and training facilities; provision of adequate locker rooms; financial assistance; coaching; provision of medical and training services; provision of equipment and supplies; recruitment; tutoring and counseling services; administrative and clerical support services; and overall funding for women's intercollegiate athletics.
REGION VI	
34. Baylor Univ., Tex. (CR) No. 06-83-6001 Title IX/Athletics	None. Compliance review.

Page 6 - Allegations in cases affected by Grove City

Case	Allegations
REGION VII	
35. State Fair Comm. College, Mo. (C) No. 07-84-2012 Title IX/Athletics	Complainant alleges that the College discriminated against female student athletes in offering them inferior athletic opportunities in recruitment; financial assistance/scholarships; equipment, supplies and facilities; medical and training facilities and services; support services; scheduling; assignment and compensation of coaching staff; opportunity to receive coaching; academic tutoring; travel and per diem; athletic housing and dining facilities; and publicity.
36. State Fair Comm. College, Mo. (C) No. 07-84-2014 Title IX/Student Beneficiary/ Treatment	Complainant alleges that the College retaliated against two female athletes by cutt off their financial aid because they continu the above complaint filed on their behalf (C plaint No. 07842012)
37. Southeast Comm. College Area, Neb. (C) No. 07-84-2020 Title IX/Athletics	Complainant alleges that the College does nc provide equal athletic opportunity for both male and female student athletes in all of the following areas: athletic recruitment; athletic financial assistance/scholarships; athletic interests and abilities; equipment, supplies, and facilities; medical and traini facilities and services; support services; scheduling; assignment and compensation of coaching staff; opportunity to receive coacl ing; academic tutoring; travel and per diem; athletic housing and dining facilities; and publicity.
38. Univ. of Nebraska (CR) No. 07-84-6004 Title IX/Athletics	None. Compliance review.
39. Univ. of Kansas (CR) No. 07-84-6402 Title IX/Athletics	None. Compliance review.

Case	Allegations
40. College of St. Mary, Neb. (C) No. 07-84-2023 Age Discrimination	Complainant alleges that the College discriminated against her on the basis of age by imposing different requirements upon her for completing the nursing program than it requir of younger students.
41. Kansas State Univ. (C) No. 07-84-2024 Section 504/Employment	Complainant alleges that his job was terminat when it became impossible for him to work full-time. He also alleged that due to his age the University would not award him financial assistance. The complainant stated that due to his handicap he was unable to carry a full class load that would enable him to receive financial assistance.
42. Columbia College, Mo. (C) No. 07-84-2025 Section 504/Employment	Complainant suffers from dysfunctional dyslexia as the result of brain surgery and alleges that the College did not provide reasonable academic adjustments by wording he tests in a certain way to accommodate her handicap. As a result, she failed the class. The complainant stated she requested such reasonable academic adjustments and the Coll refused.
43. Wichita Business College, Kn. (C) No. 07-84-2026 Section 504/Employment	Complainant alleges that the College does no make its programs accessible to the mobility impaired. The College advertises that its programs are accessible. When the student arrived, she was unable to participate becau the facilities were not accessible to her.
44. Central Midwest Ed. Lab., Mo. (C) No. 07-82-1017 Section 504/Assignment	In April 1981, the complainants allege discrimination against handicapped students, including their son, by failure to provide or ensure that the students were provided a fre appropriate public education. The complaina further alleged failure to notify or ensure that parents of handicapped students were notified of procedural safeguards.

REGION VIII

Case	Allegations
45. Univ. of Wyoming (CR) No. 08-84-6001 Title IX/Athletics	None. Compliance review.

Case	Allegations
6. Univ. of Colorado (CR) No. 08-84-6003 Title IX/Athletics	None. Compliance review.
47. South Dakota State Univ. (C) No. 08-84-2006 Title IX/Athletics	Complainant allege the University discriminated against women in its athletic programs by providing women facilities, travel budget scholarships, and publicity that were inferi to men's.

REGION IX

Case	Allegations
48. Los Angeles Southwest College (CR) No. 09-84-6001 Title IX/Athletics	None. Compliance review.
49. Victor Valley Comm. College, Ca. (CR) No. 09-84-6004 Title IX/Athletics	None. Compliance review.

REGION X

Case	Allegations
50. Univ. of Washington (C) No. 10-76-0017 Title IX/Athletics	Complainants allege discrimination against women athletes in areas of opportunities fo coaching, housing and dining facilities, equipment and supplies, compensation of coaches, travel and per diem, and publicity
51. Univ. of Washington (C) No. 10-83-2018 Title IX/Athletics	Complainants allege that interest of women in having an intercollegiate soccer team an not just a club team was not accommodated b the University, although there is a men's soccer team.
52. Idaho State Univ. Id. (C) No. 10-78-[illegible] Title IX/Athletics	Complainants allege discrimination against women athletes because opportunities were not equal to those offered men athletes in areas of coaching; financial aid; training; administrative support; travel and per diem housing; publicity; awards; equipment; supplies; and medical services.
53. College of Southern Idaho, Id. (C) No. 10-81-2032 Title IX/Athletics	Complainant alleges the athletic program di criminated against women by offering inferi opportunities in the areas of financial ai scheduling, equipment and supplies.

Case	Allegations
54. College of Southern Idaho, Id. (C) No. 10-80-2046 Title IX/Athletics	Complainants allege discrimination against women athletes in areas of financial aid, recruiting, assessing interests and abilities coaching.
55. Gonzaga Univ. Wa. (C) No. 10-80-2016 Title IX/Athletics	Complainants allege discrimination against women athletes because the University offered men athletes better facilities, equipment and supplies, locker rooms, more available coaching and financial aid, superior recruiting efforts, more attention to their interests an abilities.
56. Centralia College Wa. (C) No. 10-75-4062 Title IX/Athletics	Complainants allege discrimination against women in varsity athletics because inferior facilities were offered, compared to men's facilities; interests and abilities of women were not properly assessed; and team schedules for women were inferior.
57. Centralia College, Wa. (C) No. 10-74-4080 Title IX/Athletics	Complainants allege that varsity athletic programs were lacking for women and therefore discriminatory in the areas of financial aid; assessment of interest and abilities; facilities; team schedules; opportunities for coaching; compensation for coaches of women's teams; equipment and supplies; training and medical services; lockers, publicity and travel.

CASES AFFECTED BY GROVE CITY AS OF 10/30/84

Region I

Case	Action Taken
1. Simmons College, Maine (C) No. 01-84-2005 Title IX/ Employment	3/2/84 - Closed pursuant to Rice v. Harvard*. No reexamination letter sent.
2. Northeastern Univ. (C) No. 01-84-2020 Title IX/Sexual Harassment	5/1/84 - Suspended 8/27/84 - Reexamination letter sent to complainant. 8/31/84 - Reexamination letter sent to recipient. Funding information being reviewed.
3. Southeastern Mass. Univ. (C) No. 01-84-2025 Title IX/Employment	6/22/84 - Suspended 8/27/84 - Complainant notified of reexamination. 8/31/84 - Recipient notified of reexamination and funding information requested. 9/26/84 - Recipient responded to funding request. Funding information being reviewed.
4. Mass. College of Art (C) No. 01-84-2028 Title IX/Student Services	7/16/84 - Suspended 8/27/84 - Complainant notified of reexamination. 8/31/84 - Recipient notified of reexamination and funding information requested. 9/26/84 - Recipient responded to funding request. Funding information being reviewed.
5. So. Ct. State College (CR) No. 01-84-6001 Title IX/Athletics - Financial Aid	6/84 - Suspended by telephone conversation. 10/17/84 - Recpient notified of reexamination.
6. Yale Univ. (C) No. 01-83-2025 Section 504/Employment	6/20/84 - Suspended 8/27/84 - Complainant notified of reexamination. 8/31/84 - Recipient notified of reexamination and funding information requested. 10/10/84 - Recipient indicated it is preparing response to request for funding.
7. So. Central Comm. CT (C) No. 01-84-2010 Section 504/Employment	5/24/84 - Suspended 8/27/84 - Complainant and recipient notified. of reexamination. Funding information being reviewed.
8. Univ. Mass. Amherst (C) School of Nursing No. 01-83-2024 Title VI/Grading	7/3/84 - Suspended 8/27/84 - Complainant notified of reexamination. 8/31/84 - Recipient notified of reexamination and funding information requested. 9/27 & 10/5/84 - Recipient responded to funding information request. Funding information is being reviewed.

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* 1st Circuit decision which raised issues similar to Grove City.

(C) = Complaint (CR) = Compliance Review

Region II (Continued)

16. Carmel Sch. Dist., NY (C) No. 02-84-1030 Title IX/Athletics	3/16/84 - Closed 9/23/84 - Reexamination letters sent. 9/27/84 - Telegram sent to institution requesting specific funding information. Funding information has not been received.
17. Addison Central S.D., NY (C) No. 02-84-1042 Title IX/Athletics	3/16/84 - Closed 8/23/84 - Reexamination letters sent. 9/27/84 - Institution contacted via telephone to request specific funding information. 10/13/84 - Funding information received and being evaluated.
18. Fashion Institu. of NY (C) No. 02-77-0560 Title IX/Employee Evaluation Treatment and Compensation	3/8/84 - Closed 8/23/84 - Reexamination letters sent. 10/23/84 - Letter sent to institution requestin specific funding information.
19. Ramapo Central SD, NY (C) No. 02-83-1038 Section 504/Program Services	3/26/84 - Referred to Headquarters for guidance. 8/31/84 - Memo from Assistant Secretary asking region to identify precise Federal funding sources. 9/14/84 - Region sent Mailogram asking Sch. Dist. for specific funding information. 9/20/84 - Funding information received and being evaluated.

Region III

20. Univ. of Maryland (C) No. 03-77-0308 Title IX/Athletics	3/6/84 - Funding information reviewed. 3/8/84 - Closed 8/20/84 - Reexamination letters sent. Funding information being reviewed.
21. Univ. of Maryland (C) No. 03-81-2028 Title IX/Athletics	3/6/84 - Funding information reviewed. 3/8/84 - Closed 8/20/84 - Reexamination letters sent. Funding information being reviewed.
22. Penn. State, PA (C) No. 03-81-2030 Title IX/Athletics Denial of Access	3/6/84 - Closed 5/24/84 - Funding information reviewed. 8/20/84 - Reexamination letters sent. 8/30/84 Developing a plan for preliminary investigation under denial of access guidance in 7/31/84 policy memo.

Page 4 - Cases Affected by Grove City As Of 10/30/84

Region IV

	Case	Action Taken
23.	Univ. of Alabama (C) No. 04-79-2098 Title IX/Athletics	3/9/84 - Closed 8/28/84 - Reexamination letters sent. Funding information being reviewed.
24.	Mississippi College (C) No. 04-76-0050 Title IX/Title VI - Employee Eval., Treatment and Hiring	3/9/84 - Closed 8/28/84 - Reexamination letters sent. Funding information being reviewed.
25.	Auburn Univ. (C) No. 04-81-2005 Title IX/Athletics including Athletic scholarships	3/6/84 - Narrowed 8/28/84 - Reexamination letters sent. Funding information being reviewed.
26.	Duke Univ. NC (C) No. 04-81-2020 Title IX/Athletics including Athletic Scholarships	3/9/84 - Narrowed 8/28/84 - Reexamination letters sent. Funding information being reviewed.
27.	Dekalb Comm. College (C) No. 04-77-0042 Section 504/Employment	5/24/83 - Closed 8/29/84 - Complainant and recipient notified of reexamination. Funding information being reviewed.
28.	Univ. of Miami No. 04-80-2059 Title IX/Athletics	2/28/84 - Ceased Monitoring Corrective Action Plan. 8/28/84 - Reexamination letters sent. Funding information being reviewed.
29.	Vanderbilt Univ. TN (CR) No. 04-84-6001 Title IX/Athletics including Athletic scholarships	7/10/84 - Narrowed 8/28/84 - Reexamination letters sent. Funding being reviewed.
30.	Medical Univ. of S. Carolina (C) No. 04-84-2051 Section 504/Employment	9/14/84 - Closed (Employing entity, the blood bank, does not receive Federal financial assistance.

Region V

	Case	Action Taken
31.	Miami Univ., OH (C) No. 05-84-2008 Title IX/Athletics including Athletic scholarships	4/12/84 - Closed 8/30/84 - Reexamination letters sent.
32.	Ball State Univ. (C) No. 05-82-2045 Title IX/Athletics	11/8/83 - OCR issued violation corrected letter of findings. 5/9/84 - Ceased monitoring corrective action plan 9/13/84 - Reexamination letter sent.

Page 5 - Cases Affected By Grove City As Of 10/30/84

Region V (continued)

	Case	Action Taken
33.	Ohio Univ. (C) No. 05-79-2127 Title IX/Athletics including Athletic scholarships	8/29/83 - OCR issued violation corrected letter of findings. 6/24/84 - Ceased Monitoring Corrective Action Plan. 9/13/84 - Reexamination letter sent.
34.	Western Michigan Univ. (C) Title IX/Athletics including Athletic scholarships	8/20/82 - OCR issued violation corrected letter of findings. 4/30/84 - Ceased Monitoring Corrective Action Plan. 9/13/84 - Reexamination letters sent. 10/4/84 - University voluntarily submitted update regarding progress with its corrective action plan.
35.	Univ. of Minnesota (C) No. 05-74-0526 Title IX/Athletics including Athletic scholarships	6/25/84 - Ceased Monitoring Corrective Action Plan. 9/13/84 - Reexamination letters sent.

Region VI

	Case	Action Taken
36.	Baylor Univ. (CR) No. 06-83-6001 Title IX/Athletics including Athletic scholarships	3/8/84 - University submitted corrective action plan. 3/22/84 - Monitoring suspended 10/19/84 - Reexamination letter sent to recipient. Funding information being reviewed.

Region VII

	Case	Action Taken
37.	State Fair Comm. College, MO (C) No. 07-84-2012 Title IX/Athletics including Athletic scholarships	3/23/84 - Suspended 9/24/84 - Reexamination letters sent. Funding information being reviewed.
38.	State Fair CC, MO (C) No. 07-84-2014 Title IX/Retaliation and Athletic scholarships	3/23/84 - Suspended per phone conversation. Funding information reviewed and determined OCR has jurisdiction. 9/27/84 - Investigation ongoing.
39.	Southeast CC Area (C) No. 07-84-2020 Title IX/Athletics including Athletic scholarships	7/10/84 - Suspended 8/30/84 - Reexamiantion letters sent. Funding information being reviewed.
40.	Univ. of Nebraska (CR) No. 07-84-6004 Title IX/Athletics including Athletic scholarships	3/30/84 - Suspended 10/9/84 - Reexamination letter sent to recipient.

Region VII (Continued)

41. Univ. of Kansas (CR) No. 07-84-6402 Title IX/Athletics including Athletic scholarships	3/30/84 - Suspended 10/9/84 - Reexamination letter sent to recipient.
42. College of St. Mary (C) No. 07-84-2023 Age Discrimination	9/13/84 - Complainant notified that OCR is investigating funding received by the institution. 10/26/84 - Complaint withdrawn by complainant.
43. Kansas State Univ. (C) No. 07-84-2024 Section 504/Emplayment	9/13/84 - Complainant notified that OCR is investigating funding received by the institution. Funding information is being reviewe
44. Columbia College (C) No. 07-84-2025 Section 504/Employment	9/17/84 - Complainant notified that OCR is investigating funding received by institution. Funding information is being reviewe
45. Wichita Business College (C) No. 07-84-2026 Section 504/Employment	9/13/84 - Complainant notified that OCR is investigating funding received by institution. Funding information is being reviewe
46. Central Midwest Ed. Lab., Mo (C) No. 07-82-1017 Section 504/Employment	3/9/84 - Closed No reexamination letter sent. Institution no longer in existence.

Region VIII

47. Univ. of Wyoming (CR) No. 08-84-6001 Title IX/Athletics including Athletic scholarships	4/12/84 - OCR reqested funding information from recipient. 4/18/84 - Recipient responded to funding information request. 5/3/84 - Narrowed 9/21/84 - Reexamination letters sent. Funding information being reviewed.
48. Univ. of Colorado (CR) No. 08-84-6003 Title IX/Athletics	5/9/84 - OCR requested funding information from recipient. 7/27/84 - Recipient responded to funding information request. 9/17/84 - Closed 9/26/84 - Reexamination letter sent. Funding information being reviewed.
49. South Dakota State Univ. (C) No. 08-84-2006 Title IX/Athletics including Athletic scholarships	3/22/84 - Narrowed 5/16/84 - Closed 9/19/84 - Reexamination letters sent. Funding information being reviewed.

Page 7 - Cases Affected By Grove City As Of 10/30/84

Region IX

Case	Action Taken
50. Los Angeles Southwest College (CR) No. 09-84-6001 Title IX/Athletics	5/23/84 - Closed 8/28/84 - Reexamination letter sent and recipient advised that after a review of funding information, OCR determined there was no jurisdicatio
51. Victor Valley CC (CR) No. 09-84-6004 Title IX/Athletics	5/23/84 - Closed 8/28/84 - Reexamination letter sent and recipient advised that after a review of funding information, OCR determined there was no jurisdiction.
52. Hilltop Beauty School, Inc. (C) No. 09-83-4004 Title IX/Sexual Harassment Title VI/Differential Treatment	9/28/84 - Letter of findings issued which concluded OCR does not have jurisdiction over issue of discriminatory treatment of black students because program involved does not receive Federal financial assistance. All other allegations investigated.
53. Arizona State Department of Correction (C) No. 09-83-4003 Section 504/Employment	6/11/84 - Closed A review of funding information indicated complainant was not employed in any educational programs receiving Federal financial assistance.

Region X

Case	Action Taken
54. Univ. of Washington (C) No. 10-78-0017 Title IX/Athletics including Athletic scholarships	3/9/84 - Closed 8/29/84 - Reexamination letters sent. Funding information being reviewed.
55. Univ. of Washington (C) No. 10-83-2018 Title IX/Athletics including Athletic scholarships	3/9/84 - Closed 8/29/84 - Reexamination letters sent. Funding information being reviewed.
56. Idaho State Univ. ID (C) No. 10-78-0042 Title IX/Athletics including Athletic scholarships	3/9/84 - Closed 8/29/84 - Reexamination letters sent. Funding information being reviewed.

Page 8 - Cases Affected by Grove City As Of 10/30/84

Region X (Continued)

57.	College of Southern Idaho,ID (C) No. 10-81-2032 Title IX/Athletics including Athletic scholarships	3/9/84 - Closed 8/29/84 - Reexamination letters sent. Funding information being reviewed.
58.	College of Southern Idaho ID (C) No. 10-80-2046 Title IX/Athletics including Athletic scholarships	3/9/84 - Closed 8/29/84 - Reexamination letters sent. Funding information being reviewed.
59.	Gonzaga Univ. WA (C) No. 10-80-2016 Title IX/Athletics including Athletic scholarships	3/9/84 - Closed 8/29/84 - Reexamination letters sent. Funding information being reviewed.
60.	Centralia College WA (C) No. 10-75-4062 Title IX/Athletics including Athletic scholarships	3/9/84 - Closed 8/29/84 - Reexamination letters sent. Funding information being reviewed.
61.	Centralia College, WA (C) No. 10-74-4080 Title IX/Athletics including Athletic scholarships	3/9/84 - Closed 8/29/84 - Reexamination letters sent. Funding information being reviewed.

Mrs. **Schneider**. I might also mention that not all of those cases are title IX complaints, *Grove City* also jeopardized title VI, as we have already been discussing; section 504, and also the Age Discrimination Act.

The list includes complaints impacting all four of these different pieces of legislation. And these are not just cases where the allegation of discriminations are made, but in several cases, we are talking about the Department of Education has already investigated and confirmed instances of discrimination, but just failed to take some action.

So, if these cases, which have been dropped, the question is how many instances of discrimination are going at this time, unchecked. And since this list is only from the Department of Education, what about compliance that falls under the jurisdication of other enforcement agencies?

I believe that this is only the tip of the iceberg, and one which we must act on as expeditiously as possible, lest we find more individuals, regardless of their age, their sex, their race, or handicap, are being left out on a limb.

Now, just to touch on some of the technical, legal aspects that are already under discussion: This year's bill, H.R. 700, is far more simple and far more focused than the bill that we had introduced last year, 5490, particularly when it comes to the term of "recipient", and defining program and activity.

This particular bill, H.R. 700, I believe clearly defines program or activity to mean all the operations of—and I would like to list these for the record.

First, the department or agency of a State, or of a local government.

Second, the entity of such State or local government that distributes money for, and each agency or department which gets the money.

Third, a university, system of higher education, local education agency, or other school system.

Fourth, a corporation, partnership, or other private organization.

Fifth, any other entity which doesn't fit into the above category.

For example, a multicounty sewer authority, which can be analogized to one of the above categories.

Well, the way that it works is that only recipients of Federal financial assistance are covered under these laws. This determination is made under existing regulations, set by executive departments.

So, if you are considered a recipient under these particular regulations, then your programs or activities, as defined above, are covered.

Now, when we are talking about coverage, versus fund termination, the pinpointing provision stays in place, although the coverage is institutionwide. If discrimination is found, then those funds can only be cutoff which support discriminatory practices.

I think that this is a very important distinction, one that has come forward through the various questions.

Grove City said that since fund termination is program-specific, then coverage should be program-specific, too. Prior practice and H.R. 700 states very clearly, I believe, that coverage is institutionwide, but fund termination is program-specific.

I think that it is important to note that, I believe, that H.R. 700 restores what had been the judicial and the executive branches' interpretation of these statutes, as Mr. Conyers had earlier pointed out, we have had the four previous administrations come here to testify, and to make it very clear, be they Democrats, or Republicans, that they support the interpretation of title IX, as we have recommended.

H.R. 700, I believe, is actually narrower than last year's Civil Rights Act, since it doesn't cover States on an institutionwide basis.

Well, I think that most of the questions that had been asked earlier today pretty much clarify what I believe to be the legal refineries of the concerns that have been raised.

I believe that given the history of the number of cases that have been either put on hold, or just dismissed at this point, prompt legislative action really is necessary to rectify the effects of *Grove City*, as quickly as possible.

And there is very little question in my mind that we simply must embrace a commitment to civil rights that transcends party lines. And that we clarify once and for all the Federal Government's commitment to four statutes, and to insure the vigorous enforcement and enthusiastic enforcement of each of those particular laws.

So, I am delighted, Mr. Chairman, that you are holding these hearings. I encourage you to move along swiftly, so that we may not have more people who are left on the sidelines as a result of the Supreme Court's decision, a year ago this past February.

And I am enthusiastically looking forward to working with you, in whichever way I can.

The **Chairman**. Thank you, Mrs. Schneider. You certainly have brought something new to us, which at this time of day is quite an accomplishment itself.

We certainly thank you for that contribution.

Mr. **McKernan**. Yes, Mr. Chairman, I just want to commend Congresswoman Schneider's leadership role in, not only title IX, but all civil rights issues, and to thank her, since she arrived here 2 years before I did. During my first term, last year and the year before, she included me in her many endeavors, and I think that she is absolutely on the right track.

Mrs. **Schneider**. Thank you very much.

The **Chairman**. Mr. Conyers.

Mr. **Conyers**. Well, this has been very important, I think your leadership has been very helpful in this. And I am impressed by the fact that you say actually we have reduced our scope in 700. And I think that was probably a pragmatic determination, just to facilitate it going through one more time.

Mrs. **Schneider**. Exactly.

Mr. **Conyers**. And I congratulate you, as everyone else here has. Thank you.

Mrs. **Schneider**. Thank you kindly.

The **Chairman**. Mr. Hayes.

Mr. **Hayes**. No question. A very profound and supportive statement, I appreciate it.

The **Chairman**. Mr. Bruce.

Mr. **Bruce**. No questions.

The **Chairman**. Well, you have won us over.

Mrs. **Schneider**. All right "How To Win Friends and Influence People"—thank you, Mr. Chairman.

The **Chairman**. Thank you, and again, thanks for appearing before the committee.

The next witness is Mr. Harry Singleton, Assistant Secretary for Civil Rights for the Department of Education.

Mr. Singleton, we apologize for the lateness of the hour. We are delighted that you are tolerant, and we look forward to your statement. It will be printed in the record, and you may summarize from it, as you see fit.

[Prepared statement of Harry Singleton follows:]

PREPARED STATEMENT OF HARRY M. SINGLETON, ASSISTANT SECRETARY FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION

Mr. Chairman, I welcome this opportunity to appear before you and the members of the Committees on Education and Labor and Judiciary convened here for the purpose of considering legislation regarding the effects of the Supreme Court's decision in Grove City v. Bell.

Within the Department of Education, the Office for Civil Rights (OCR) is responsible for the administration and enforcement of those statutory provisions which have been affected by the Grove City decision; Title VI of the Civil Rights Act of 1964 which prohibits discrimination on account of race, color or national origin; Title IX of the Education Amendments of 1972 which prohibits discrimination on account of sex; Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on account of handicap and the Age Discrimination Act of 1975. OCR must ensure that civil rights responsibilities embodied in those statutes are carried out by over 16,000 elementary and secondary education agencies and 3,200 colleges and universities, thereby assuring that 58 million students in this country are afforded equal access to programs and activities receiving Federal financial assistance.

In the Grove City case, the Supreme Court unanimously held that Grove City College, by virtue of its participation in the Basic Educational Opportunity Grant (BEOG) program, is a recipient of Federal financial assistance, and is therefore subject to Title IX of the Education Amendments of 1972. Based on the "program or activity" language in the statute, the Court also held that Title IX coverage triggered by such Federal financial assistance extends only to the College's financial aid office, and does not trigger broader coverage.

Prior to the Grove City decision, the Department of Education had interpreted the "program and activity" language in Title IX as providing that if Federal aid is extended to an educational institution, then all of the institution's education programs and activities are covered. The Department of Education would welcome and support legislation which, like S. 272 introduced by Senator Dole, would restore our pre-Grove City understanding of the scope of Title IX. Unfortunately, several provisions of H.R. 700 go beyond that result and would provide for a Federal jurisdiction which would be broader than that exercised by the Department of Education prior to the Grove City decision. A few examples with regard to educational institutions would illustrate my point.

H.R. 700 would provide that the term "'program or activity' means all the operations of--" the educational entities specified in the proposal, so long as "any part" of those entities received Federal financial assistance (Emphasis added). With reference to educational entities -- universities and school districts -- such a definition of "program or activity" would certainly create jurisdiction in portions of "operations" in which OCR would not have exercised jurisdiction based on interpretations of the term "program or activity" in use pre-Grove City. For example, under H.R. 700, financial assistance flowing to only one "part" of a university -- one department, building, college or graduate school -- would create jurisdiction in all departments, buildings, colleges and graduate schools of that university wherever geographically located, as well as in non-educational "operations" in which the university might be engaged such as broadcasting, rental of non-student housing or even the management of its endowment fund. In declaring that all such operations of a college or university, even those absolutely unrelated to educational programming, are to be within the jurisdiction of the Federal government under such circumstances, H.R. 700 goes well beyond its announced purpose of merely restoring that jurisdiction previously exercised. Similarly, H.R. 700 creates the opportunity for an expanded jurisdiction with reference to "all the operations" of other entities to which the Department provides financial assistance -- State education agencies (SEAs), local education agencies as well as other recipients of financial assistance from this Department where only one part of the entity actually received the assistance.

The approach of H.R. 700 contrasts with that offered by S. 272, as introduced by Senator Dole. We strongly support S. 272 because it offers the best possibility for ameliorating the effects of the Grove City decision without expanding Federal jurisdiction beyond that existing prior to the Court's action. S. 272 provides that if Federal aid is extended to an educational program or activity at an institution, then all the institution's educational programs or activities will be subject to the civil rights laws. This simple approach would respond to the Grove City decision by permitting OCR to exercise jurisdiction in all educational programs at a recipient institution and would not, at the same time, require that jurisdiction also be asserted over certain noneducational "operations" in which the Department has not been involved.

In so doing, S. 272 would eliminate the need to devote resources as the Department is now doing to analyze its programs which disburse funds to determine whether or not a particular type of assistance would be regarded as providing broad or more limited jurisdiction.

Since the Grove City decision over a year ago, OCR has maintained a fine record of achievement in enforcing the law. OCR has continued to investigate cases, issue findings, conduct negotiations, reach settlements when possible, and, when necessary, proceed to initiate enforcement proceedings in order to bring about compliance with the civil rights laws for which it is responsible.

[illegible] jurisdiction had been curtailed by the Grove City decision. Following the issuance of written policy, OCR confirmed the lack of jurisdiction in approximately five of those cases. In the remaining cases, mostly arising in postsecondary contexts, OCR staff is gathering more data to apply the existing policy or is awaiting further written policy guidance. The enaction into law of S. 272 would enable OCR to quickly resolve questions regarding its authority to pursue pending cases.

Mr. Chairman, I would be happy, at this time, to respond to questions from you or members of the committees.

Thank you.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

MAR 6 1984

Dr. Bryce Jordon
President
The Pennsylvania State University
201 Old Main
University Park, Pennsylvania 16802

Dear Dr. Jordon:

The Office for Civil Rights (OCR) advised you on February 23, 1982 and April 14, 1982 of its decision to investigate the complaint against The Pennsylvania State University (Penn State) filed by Mr. Timothy K. Conley on behalf of the Women's Soccer Club under Title IX of the Education Amendments of 1972. In letters dated March 15, 1982 and May 6, 1982 Penn State declined to participate in the proposed investigation pending judicial or executive clarification of whether Title IX is applicable to a program or activity which is not the recipient of Federal funds.

In light of the recent Supreme Court decision in Grove City College v. Bell, it appears that OCR does not have jurisdiction to investigate the complaint of sex discrimination in Penn State's athletic program. We are, therefore, closing the above referenced complaint.

Sincerely,

Harry M. Singleton
Assistant Secretary
for Civil Rights

U.S. DEPARTMENT OF EDUCATION
3535 MARKET STREET P.O. BOX 13716
PHILADELPHIA PENNSYLVANIA [illegible]

OFFICE FOR
CIVIL RIGHTS

REGION III

MAR 08 1984

Our Ref: 03770308
03812028

Dr. John Toll, President
University of Maryland College Park
College Park, Maryland 20742

Re: Title IX Intercollegiate Athletics Compliance Review

Dear Dr. Toll:

By letter dated February 23, 1984, the Office for Civil Rights sent the University of Maryland College Park (UMCP) a statement detailing those aspects of its intercollegiate athletic program which we had concluded violated Title IX of the Education Amendments and its implementing regulation at 34 C.F.R. Section 106.41(c). These areas had been identified previously for the University and were discussed at a meeting with UMCP officials and representatives on January 24, 1984.

On February 27, 1984, we received a letter from Assistant Attorney General Frederick G. Savage, on behalf of UMCP, responding to the concerns that OCR and UMCP representatives had discussed at the January 24, 1984 meeting. This letter set forth actions already taken and planned to be taken by the University in the areas of travel, provision of locker rooms, recruitment, support services, and the accommodation of student interest.

Since receiving Mr. Savage's letter, we have carefully reviewed our records of Federal financial assistance to UMCP's athletic program. We have concluded that we do not have jurisdiction to pursue this matter further, since the outstanding issues do not concern the operation of UMCP's athletic financial assistance program, which we found to be in compliance with Title IX and 34 C.F.R. Section 106.37(c). We remain available to provide members of your staff with technical assistance in the area of intercollegiate athletics, upon request.

I would like to thank you and your staff for the courtesy and cooperation extended during the course of this review.

Very truly yours,

Ronald Gilliam
for Dewey E. Dodds, Director
Office for Civil Rights
Region III

cc: Frederick G. Savage

AUG [illegible] 1983

Dr. Wilford S. Bailey
Acting President
Auburn University
Auburn, Alabama 36849

Dear Dr. Bailey:

Re: Docket Number 04-81-2005

By a letter dated July 2, 1981, the Office for Civil Rights (OCR) of the Department of Education (formerly of the Department of Health, Education and Welfare) informed you that it planned to conduct an investigation of the above referenced complaint alleging discrimination on the basis of sex in the intercollegiate athletic program. The complaint alleged that the University is not accommodating the interests and abilities of its female students as required by the Title IX Regulation. In addition, the complaint alleged sex discrimination in the provision of athletic-based financial assistance, the assignment and compensation of coaches, the provision of locker rooms, practice and competitive facilities, the provision of trainers, recruitment, the provisions for travel and per diem, housing, and publicity.

Section 901(a) of Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681 (hereinafter cited as Title IX), provides:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

In addition, the provisions of HEW's implementing regulation for Title IX, 34 C.F.R. Part 106, which became effective on July 21, 1975, and was adopted by the Education Department on May 9, 1980, set forth specific requirements regarding intercollegiate athletics (copy enclosed). Athletic scholarships are addressed at 34 C.F.R. Section 106.37(c). The general prohibition of discrimination on the basis of sex in intercollegiate athletic programs is addressed at 34 C.F.R. Section 106.41.

Because the Title IX regulation established separate legal standards for the provision of equal athletic opportunity in program areas other than financial assistance, OCR has assessed compliance with the two sections of the regulation individually.

As a means of assessing compliance, we have followed the directions provided in the Policy Interpretation issued by the Department of Health, Education, and Welfare on December 11, 1979. 44 Fed. Reg. 71413 et seq. (1979).

In assessing compliance with Section 106.37, OCR considered 1) whether the total amount of athletic scholarship aid available to male and female athletes was substantially proportionate to their rates of participation in intercollegiate athletics; and 2) whether different types of non-grant athletic assistance were proportionately available to male and female athletes.

We assessed compliance with 34 C.F.R. Section 106.41(c) by reviewing the overall intercollegiate athletics program. We reviewed the ten factors listed in the regulation plus the recruitment of student athletes and the provision of support services. (As explained in the Policy Interpretation, the regulation authorizes OCR to consider factors other than those listed in the regulation.)

In each program area we examined whether the availability, quality and kinds of benefits, opportunities and treatment provided were equivalent for both sexes. Equivalent is defined as equal or equal in effect. It is important to note that we compared the men's program and the women's program on an overall basis, rather than on a sport-by-sport basis that would pair, for example, men's basketball and women's basketball. Where disparities were noted, we considered whether the differences were negligible. Where the disparities were not negligible, we determined whether they were the result of nondiscriminatory factors. Finally, we determined whether disparities resulted in the denial of equal opportunity to male or female athletes, because the disparities collectively were of a substantial and unjustified nature, or because the disparities in individual program areas were substantial enough in and of themselves to deny equality of athletic opportunity.

The regulation at 34 C.F.R. Section 106.41(c) provides that "unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex." Where appropriate, we have considered the level of funding for men's and women's programs in assessing the equivalence of benefits and opportunities.

SUMMARY OF FINDINGS

Athletic Financial Assistance

In 1981-82, Auburn awarded 83% of all financial aid based on athletic ability to men and 17% to women. Men comprised 75% of all participants while women omprised 25% (1981-82) of all participants. OCR determined that the differences in these awards were significant and finds that Auburn University is not in compliance with 34 C.F.R. Section 106.37(c).

Other Program Areas

OCR finds that Auburn University is providing male and female athletes equivalent treatment, benefits and opportunities in the following areas: provision and maintenance of equipment and supplies, scheduling of games and practice times, opportunity to receive academic tutoring and assignment and compensation of tutors, provision of medical and training facilities and services, provision of housing and dining facilities and services, publicity, and provision of support services.

OCR found that benefits, opportunities and treatment were not equivalent in the areas of travel and per diem allowances, coaching, the provision of locker rooms, practice and competitive facilities, recruitment of student athletes, and the accommodation of interest and abilities.

Enclosed is a Statement of Findings which provides a more complete description of the general background, scope and method of investigation of the review. It states the factual findings of the investigation and describes the bases for the conclusions. The report is divided into two principal parts: Athletic Financial Assistance and Other Program Areas.

This letter of findings addresses only the issues listed above and should not be interpreted as a determination of Auburn University's compliance or noncompliance with Title IX in any other respect. It should be emphasized that the findings and conclusions in this letter and the attached Statement of Findings are based on the applicable provisions of the Title IX implementing regulations and the Policy Interpretation described above.

You are requested to submit a plan to correct the violations of Title IX within 7 days. After receipt of the plan, there will be an evaluation period during which we shall communicate with you or your representatives, as necessary, regarding clarifications or modifications of the plan. After this evaluation period, OCR must either accept the plan or initiate enforcement proceedings. We are compelled to adhere to specific timeframes in resolving a case by an Order of the U.S. District Court of the District of Columbia, dated March 11, 1983. OCR is available to assist you in developing an acceptable corrective plan.

The Freedom of Information Act requires that the Office for Civil Rights release this letter and other information about this case upon request by the public. In the event that OCR receives such a request, we will protect information that identifies individuals or that may constitute an invasion of privacy, and will inform the University if we are compelled to release information.

We wish to thank you and your staff for the cooperation shown throughout this matter. If you have further questions, please do not hesitate to call me at (404) 221-2954, or Louis O. Bryson, Sr., Director, Postsecondary Education Division, at (404) 221-2970.

Sincerely yours,

William H. Thomas
Director

Enclosures

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Institution: Auburn U
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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

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James M. Walters, Esquire
Fisher & Phillips
3500 First Atlanta Tower
Atlanta, Georgia 30383

Re: Auburn University
OCR Complaint No. 04-81-2005

Dear Mr. Walters:

On August 19, 1983, the Office for Civil Rights (OCR) found that Auburn University violated Title IX of the Education Amendments of 1972 with regard to student financial aid for athletes (under 34 C.F.R. § 106.37(c)), and with regard to specified inequities in intercollegiate athletics (under 34 C.F.R. § 106.41(c)). On the basis of the February 28, 1984 decision of the Supreme Court in the case Grove City College v. Bell and in the absence of Federal financial assistance to athletics at Auburn, it appears that the discrimination found with respect to 34. C.F.R. § 106.41(c) is beyond the jurisdicition of Title IX. OCR therefore will proceed on the basis of the student financial aid finding, but not on the basis of the other findings listed in OCR's August 19, 1983 letter.

Sincerly,

Harry M. Singleton
Assistant Secretary
for Civil Rights

STATEMENT OF HARRY SINGLETON, ASSISTANT SECRETARY FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

Mr. SINGLETON. Thank you, Mr. Chairman. I welcome this opportunity to appear before you and the members of the Committee of Education and Labor, and the Judiciary, convened here for the purpose of considering legislation regarding the effects of the Supreme Court's decision in *Grove City* v. *Bell.*

Within the Department of Education, the Office for Civil Rights is responsible for the administration and enforcement of those statutory provisions which have been affected by the *Grove City* decision: title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

OCR must ensure that the civil rights responsibilities embodied in those statutes are carried out by over 16,000 elementary and secondary education agencies, and 3,200 colleges and universities.

In the *Grove City* case the Supreme Court unanimously held that Grove City College, by virtue of its participation in the Basic Educational Opportunity Grant Program, is a recipient of Federal financial assistance, and is, therefore, subject to title IX of the Education Amendments of 1972. Based on the program or activity language in the statute, the majority of the Court also held that title IX coverage triggered by such Federal financial assistance extends only to the college's financial aid office, and does not trigger broader coverage.

Prior to the *Grove City* decision, the Department of Education had interpreted the "program and activity" language in title IX as providing that if Federal aid is extended to an educational institution, then all of the institution's educational programs and activities are covered.

The Department of Education would welcome, and support legislation which, like S. 272, introduced by Senator Dole, would restore our pre-*Grove City* understanding of the scope of title IX. Unfortunately, several provisions of H.R. 700 go beyond that result, and would provide for a Federal jurisdiction which would be broader than that exercised by the Department of Education, prior to the *Grove City* decision.

A few examples with regard to educational institutions would illustrate my point. H.R. 700 would provide that the term "program or activity" means all the operations of the educational entities specified in the proposal, so long as any part of those entities receive Federal financial assistance.

With reference to educational entities, universities and school districts, such a definition of program or activity would certainly create jurisdiction in portions of operations in which OCR would not have exercise jurisdiction based on interpretations of the term "program or activity" in use, pre-*Grove City*.

For example, under H.R. 700, financial assistance flowing to only one part of the university, one department, building, college or graduate school, would create jurisdiction in all departments, buildings, colleges, and graduate schools of that university, wherever geographically located, as well as in noneducational operations in which the university might be engaged such as broadcasting, rental of nonstudent housing, or even the management of its endowment fund.

In declaring that all such operations of a college or university, even those absolutely unrelated to educational activities, are to be within the jurisdiction of the Federal Government, H.R. 700 goes well beyond its announced purpose, of merely restoring that jurisdiction, previously exercised. Similarly, H.R. 700 creates the opportunity for an expanded jurisdiction, with reference to all the operations of other entities to which the Department provides financial assistance, State education agencies, local educational agencies, as well as other recipients of financial assistance from this Department. Where only part of the entity actually received the assistance.

The approach of H.R. 700 contrasts with that offered by S. 272, as introduced by Senator Dole. We strongly support S. 272 because it offers the best possibility for ameliorating the effects of the *Grove City* decision, without expanding Federal jurisdiction beyond that existing prior to the court's action. S. 272 provides that if Federal aid is extended to an educational program or activity at an institution, then all the institution's educational programs or activities will be subject to the civil rights laws. This simple approach would respond to the *Grove City* decision by permitting OCR to exercise jurisdiction in all educational programs at a recipient institution and would not, at the same time, require that jurisdiction also be asserted over certain noneducational operations in which the Department has not been involved traditionally.

In so doing, S. 272 would eliminate the need to devote resources as the Department is now doing to analyze its programs which disburse funds to determine whether or not a particular type of assistance would be regarded as providing broad or more limited jurisdiction.

Since the *Grove City* decision over a year ago, OCR has maintained a fine record of achievement in enforcing the law. OCR has continued to investigate cases, issue findings, conduct negotiations, reach settlements when possible, and when necessary, proceed to initiate enforcement proceedings in order to bring about compliance with the civil rights laws for which it is responsible.

As of February 11 of this year, OCR had identified a number of cases in which its jurisdiction had been curtailed by the *Grove City* decision. Following the issuance of written policy, OCR confirmed the lack of jurisdiction in approximately five of those cases. In the remaining cases, mostly arising in postsecondary context, OCR is gathering more data to apply the existing policy, or is awaiting further written policy guidance. The enaction into law of S. 272 would enable us to quickly resolve questions regarding our authority to pursue these pending cases.

Mr. Chairman, with that, I conclude my remarks. And I would be happy at this time to respond to any questions you, or members of the committee might have.

Thank you.

The CHAIRMAN. Mr. Singleton, let the Chair ask you this question. Is the Department of Education comfortable providing financial assistance to an education institution which runs a discriminatory housing project, or discriminates in other noneducational or commercial activities?

Mr. SINGLETON. Well, Mr. Chairman, the thing to keep in mind is that the executive branch, pretty much like the legislative branch, has a great division of labor.

My becoming involved in noneducational activities of a university or a college is really beyond the expertise and scope of my staff. So, I would tend not to want to get involved in those kinds of activities, unless of course, they related somehow to the educational program.

The CHAIRMAN. Well, you are the one providing the Federal funds, now does that mean that you ought to wink at activities that, in effect, flow out of those Federal funds, even though they may happen to be noneducational, but directly relate—I think Mr. Reynolds himself accepted the cafeteria, for example, as being educational. He, at least, went beyond you. Is there a distinction between you two, then, in that regard?

Mr. SINGLETON. No, I think in that situation the cafeteria—I mean, the institution has to feed its students. I don't think that——

The CHAIRMAN. It doesn't have to.

Mr. SINGLETON. Well, to the extent that it does, and it does have a cafeteria, then we would certainly be concerned——

The CHAIRMAN. It is a privilege it desires to offer to the students, it doesn't have to.

Mr. SINGLETON. Well, to the extent——

The CHAIRMAN. They can still be educated, even if they weren't fed at the institution.

Mr. SINGLETON. Well, I suspect that is the case. But to the extent that they do provide meals to their students, we would be concerned about that.

The CHAIRMAN. We have heard this afternoon that since *Grove City,* and the *Darrone* decision, the Department of Education has halted work—I think the statement was made on some 60 pending title IX cases.

Is that reasonably correct as to the number of cases?

Mr. SINGLETON. Well, Mr. Chairman, I think that it is more accurate to state that in approximately that number of cases there has been some limitation on our jurisdiction. Now, they weren't all title IX cases.

The CHAIRMAN. Which other type of cases were included?

Mr. SINGLETON. There may be some 504 cases, possibly title VI cases. But I guess——

The CHAIRMAN. But you have halted work on various cases, some of which were 504 cases, as well as title IX, is that so?

Mr. SINGLETON. That's correct. The vast majority of the cases, however, would be in the title IX area.

The CHAIRMAN. Can you give us an explanation of why these cases remain stalled?

Mr. SINGLETON. Well, certainly, I think that the primary explanation that I could give for that is our reluctance to dismiss the cases, in an effort to try to find some opportunity, perhaps, to continue our jurisdiction. And I think that we could conceivably dismiss many, if not all, of those cases. But rather than do that, we are waiting, with respect to the development of further policy, to determine if we hope that we can get an additional handle on some of them.

The **Chairman**. Well, the cases that you have in the Department now, have you found discrimination in any of them?

Mr. **Singleton**. I would imagine that, certainly, a number of those cases had letters of findings of violations issued, yes.

The **Chairman**. Well, then you are not about to dismiss them, are you? You say that the reason they are stalled is you don't want to dismiss them. Now, you say that discrimination has actually been found in some of them, so that I would assume you are not anxious to dismiss those. And so couldn't you proceed to work on those, where actual discrimination has been found?

Mr. **Singleton**. Well, I have to have jurisdiction to do that, and that is what *Grove City* has done, Mr. Chairman——

The **Chairman**. Well, then you get us back to *Grove City* and the reason why we should have H.R. 700.

Mr. **Singleton**. *Grove City* has called into question our jurisdiction in a number of these cases, whether we found discrimination or not, the question is whether or not we can proceed.

The **Chairman**. Well, you gave the impression that you didn't want to dismiss them, now you are saying that you——

Mr. **Singleton**. I stand by that.

The **Chairman**. Now you are worried about whether you should proceed. Is that the situation then?

Mr. **Singleton**. Well, I don't understand the question, Mr. Chairman. The point is that we have not dismissed these cases while we expend some additional effort to try to develop a policy to continue and maintain a handle on them.

The **Chairman**. Well, I assume that what you are saying is that you are fearful that *Grove City* undercuts your ability to proceed, and therefore, you have them in a holding pattern, until you decide whether or not a change will be made, whether legislation will be passed.

Is that the situation?

Mr. **Singleton**. No, I don't know that I would characterize it in that fashion, that we are waiting for legislation——

The **Chairman**. Well, how would you characterize it, you must have some characterization?

Mr. **Singleton**. Well, I will state again, Mr. Chairman, and I thought I did—I beg the indulgence of the committee—but it seems to me that we are trying to hold on to these cases, to the extent that we can.

If legislation is passed by this body that clears up the jurisdictional problem, then we won't have any problem at all, it seems.

But in the interim, we are also looking at other ways to try to preserve jurisdiction in these cases through policy development.

The **Chairman**. Thank you.

Mr. Conyers.

Mr. **Conyers**. You were here last year, weren't you?

Mr. **Singleton**. Yes; I was.

Mr. **Conyers**. I thought so.

Mr. **Singleton**. Yes; it is "Old Home Week."

Mr. **Conyers**. Right, all of the witnesses are the same.

Now, let me ask you this, wouldn't you want to be able to get discrimination in restaurants on the college campus that are run by the university?

Mr. SINGLETON. To the extent that those college restaurants serve students, and so forth, and it is taking place on the university campus, yes, I think that we would probably be interested in that.

But distinguish that, if you will, Mr. Conyers, from a situation where the university owns a restaurant across town, and it is a commercial endeavor, and it has no connection, other than perhaps as an investment, for the university's educational program.

Mr. CONYERS. What is the difference, they are getting Federal funds, aren't they? The university receives Federal funds, and therefore, as Dr. Flemming, a former university president says, it benefits the whole institution, without any doubt.

So, what would be the grave distinction between a commercially held restaurant across town that may, or may not serve students?

But that is your hypothetical, but I was just talking about the restaurant right on the campus serving students in a university building. No problem?

Mr. SINGLETON. No problem.

Mr. CONYERS. No problem. But does *Grove City* prevent you from having jurisdiction?

Mr. SINGLETON. Well, you know, I think that it would because of the program specificity of that decision.

Mr. CONYERS. Right, and don't you suspect that it interrupts your jurisdiction?

Mr. SINGLETON. *Grove City*?

Mr. CONYERS. Yes.

Mr. SINGLETON. Yes, *Grove City* does interrupt our jurisdiction.

Mr. CONYERS. Well, you feel that that is something that you should be handling?

Mr. SINGLETON. To the extent that the activity is related to the recipients federally funded program; yes.

Mr. CONYERS. Well, eating would do that.

Mr. SINGLETON. Yes; I suspect that it would if it were located on the campus.

Mr. CONYERS. So, you would like to have the jurisdiction that is precluded from *Grove City* since you would like to have educationally related functions that may be discriminatory within your jurisdiction?

Mr. SINGLETON. Well, what we would like to have, for our department is our pre-*Grove City* understanding, if you will, how we describe "program or activity".

Mr. CONYERS. Well, that is what we are trying to do.

Mr. SINGLETON. We did that rather broadly in prior to *Grove City*. But as I read H.R. 700, Mr. Conyers, it gets us beyond that. I mean, we would find ourselves exercising jurisdiction in situations where we would not prior to *Grove City*.

Mr. CONYERS. For example?

Mr. SINGLETON. You want me to give you an example?

Mr. CONYERS. It would help for the record.

Mr. SINGLETON. No, no, I am asking you.

Mr. CONYERS. For example, question mark, yes.

Mr. SINGLETON. All right, take a situation where you've got a multicampused university system, take Penn State, for example. Penn State has the main campus at State College, PA, and it has a number of satellite, or small campuses throughout the State. Prior to *Grove City,* if we had some alleged discrimination taking place at Behrend Center, say, in Erie, PA, and Behrend Center got no Federal financial assistance, but State College did, we would not exercise jurisdiction in that particular case, because there was no Federal financial assistance going to that program or activity.

With H.R. 700, we would, because the way it defines the activities. We would then be able to go into Behrend Center, and find the discrimination, or investigate, rather than basing jurisdiction upon the fact that only State College got Federal financial assistance.

Mr. CONYERS. Well, counsel tells me that this issue has never been resolved, it hasn't been adjudicated, it could go either way.

You heard the Assistant Attorney General's testimony here this afternoon, and you heard it before last year. Now, as I understand he suggested that even restaurants, and maybe even intercollegiate sports might be reached within the Senate bill.

Mr. SINGLETON. That's correct.

Mr. CONYERS. You believe that, too?

Mr. SINGLETON. Yes, we could reach—take the athletics program, intercollegiate athletics program, we could at least reach, presently, the financial aid aspects of the athletics program.

Now, with S. 272, of course, we would be able to reach more aspects of the intercollegiate athletic program because of the way we are defining our program or activity here. It is much broader.

Mr. CONYERS. Well, are there any other examples? You gave one that is rather debatable, in which H.R. 700 exceeds pre-*Grove City.*

You know, we have had a lot of people working on the writing of this, and as a matter of fact, as one Representative testified, we even trimmed it back from the bill, the Civil Rights Act of 1984.

Mr. SINGLETON. Well, that may very well be the case, Mr. Conyers, but I would submit to you that I think it still may go a little bit too far.

The CHAIRMAN. Mr. McKernan, I apologize, I skipped you in the last round.

Mr. MCKERNAN. That's OK, Mr. Chairman.

I was fascinated by that line of questioning anyway.

What aspects of an educational institution wouldn't you want to cite for discrimination?

Mr. SINGLETON. Well, I don't know that it is a matter of not wanting to cite elements of an educational institution for discrimination. It has to do more with where we find ourselves, where the tentacles of the Government are reaching.

I have a finite staff with a finite area of expertise, and with something as broad as H.R. 700, I would find myself in areas where I would not fully be competent to reach. And, in fact, I am operating under a court order now that requires me to investigate every complete complaint that we get, and to the extent that our jurisdiction would be expanded by something like H.R. 700, I would find it probably necessary to increase my staff, the resources that I have to get at this, which of course is not the direction that we are going in our effort to bring down the deficit.

Mr. McKERNAN. What about this idea, that you might need more staff with the kind of distinction that is trying to be made in the Senate bill, because you are always going to have the debate about whether or not it is an educational function, or it is an operational function. And if educational institutions understood that the quid pro quo for receiving Federal funds for any aspect of their operation was that they could not discriminate, there would never be that issue of whether or not it was educational, or operational.

Mr. SINGLETON. Well, you see, we didn't have that problem before, prior to *Grove City*. And S. 272 puts us right back in the position that we were in, in my judgment, before that decision came down.

Mr. McKERNAN. Well, this may be heresy, but let me ask the question, are we sure that that is as far as we want to go, that we only want to go back to where everybody seemed to think we were under *Grove City?*

Mr. SINGLETON. Well, I don't know. I mean, that is, I guess, for you to decide. The point is if that is what you want to do, then we don't want to characterize H.R. 700 as a piece of legislation that is going to put us back where we were, prior to *Grove City* when, in fact, it does something more.

And if that is what you are attempting to do, then we ought to characterize it as that, and——

Mr. McKERNAN. Well, I, for one—and I was not involved in this committee in the last session of Congress, or involved in anything that had to do with *Grove City,* except to support the Civil Rights Act of 1984.

But it seems to me that we ought not to allow any discrimination in any educational institution that receives Federal funds, and we ought not to try to decide whether it is operational, or educational.

As far as I am concerned, this gives us an opportunity to eradicate discrimination, and we ought to use that opportunity. I can't see where it would necessarily increase your staff needs, in fact, it could even decrease them, if we knew that the quid pro quo was no discrimination if you receive funds, don't try to make the distinction between operational and educational.

Do you have any other examples of the type of activities that you think you ought not to be investigating for discrimination in an educational institution?

You cited in your testimony nonstudent housing, broadcasting, and there was one other—you cited an example of the two campuses at Penn State. Any other examples that you have?

Mr. SINGLETON. Well, we could talk about the situation in a university that runs separate schools, like an undergraduate program, a law school, medical school, that sort of thing.

Mr. McKERNAN. Let me interrupt you here, because as I said, I am new to this issue, are you saying that you feel that if the funds only went to the undergraduate school, that the graduate school ought to be allowed to discriminate?

Mr. SINGLETON. No, I am not saying that they, necessarily, should be allowed to discriminate, but I think that there ought to be some limits on our jurisdiction, to be able to go in and deal with that.

Mr. McKERNAN. All I can say, in my real life, before I became a Member of Congress, I represented a number of clients before a panel such as this, and I had to justify my position at times when that was very tough. I can commiserate with what you are going through in trying to make that distinction today.

I think that is very difficult.

I yield back, Mr. Chairman.

The CHAIRMAN. Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

Mr. Singleton, being a nonlawyer, sometimes it requires a little more explanation for me than maybe with others. For I like to be able to clearly explain to my constitutency in the First District in Chicago, which happens to be 92 percent black, who has suffered before *Grove City,* and when it comes to clearly understanding what your position is, I am a little—I understand one end of it.

And my question is, am I correct in concluding that you are fully supportive of the Senate bill 272, but the sole basis for your opposition, as I understand it, or your objection to H.R. 700 is that it goes beyond *Grove City* in its intent and scope? That it goes beyond the decision re: *Grove City,* is that your sole reason?

Mr. SINGLETON. That's correct, Mr. Hayes, as it relates to the Department of Education, that's correct.

Mr. HAYES. Education being the sole issue that you feel that should be dealt with, in view of the many, many problems that you know my constituency must be confronted with?

Mr. SINGLETON. Well, that's correct, I am only concerned about the educational portions of it. We have other people who, hopefully, will be concerned about the other aspects of it.

Mr. HAYES. I may invite you to my neighborhood.

Mr. CONYERS. Would the gentleman yield? He has a minute or two left.

Mr. HAYES. I would be glad to yield to my colleague from Michigan.

Mr. CONYERS. Thank you.

Mr. Singleton, how would you deal with the segregated higher education systems, if you do not cover every campus automatically?

Mr. SINGLETON. In the segregated higher education system, we are dealing with something a little differently. We were talking about instances of violations of title VI that gets involved with a formerly de jure segregated system. And in those instances, our jurisdiction would apply to all of the institutions in that higher education system, because of its formerly segregated nature.

Mr. CONYERS. Irrespective of whether they are receiving Federal financial aid?

Mr. SINGLETON. To the extent that any of those campuses receive federal financial aid, I think that's right. I think the issue that you are raising now arose in one State that currently has sued us. They have raised, and this was many years ago, *Grove City*-type problems. In other words, we were required to go through on a program-by-program basis, vis-a-vis the discriminatory program.

But historically, we have not done it that way.

Mr. CONYERS. Well, H.R. 700 would cure the outstanding case that you have right now. But what if only one campus received Federal aid, and another did not?

Don't you see that there is no such thing as you getting too much jurisdiction to handle all of the matters within the educational system, whether it deals with janitors, or college sports, or restaurants, or housing—I mean, how can you sit here and tell us that that is somebody else's business?

Mr. SINGLETON. Because of the way the civil rights enforcement responsibility is spread out, Mr. Conyers.

Mr. CONYERS. Yes, but we write the laws, sir, that gives you the jurisdiction to enforce. I mean, that is what we are here determining what the law ought to be.

I am not arguing with you about your enforcement duties, presumably they flow from the legislation from Congress.

And what we are discussing here is whether or not we should allow the Department of Education to be able to go after any discrimination dealing with Federal funds, that has to do with your Department of Education.

Now, what would be more simple than giving you the whole shot? I mean, who could we get to deal with discrimination in college sports, and somebody has a restaurant across town, and that's not your problem, and someone's got a satellite school, one has Federal funds, the other may not? I mean, how can we ever move ourselves out of this initial enforcement of civil rights, if are to let ourselves get bogged down in this kind of detail?

Mr. SINGLETON. Mr. Conyers, I have a simple answer for it, strip all of the executive branch agencies, and departments of their civil rights enforcement responsibilities and put them in one place.

Mr. CONYERS. Including you?

Mr. SINGLETON. Including mine.

Mr. CONYERS. And in what place would we put them?

Mr. SINGLETON. Well, I don't know. I suspect you could put them in the Justice Department, or maybe you might want to create something and put them there. I don't know.

Mr. CONYERS. Well, I do admire you for suggesting to abolition of your own department, that takes—not everybody comes down to make that kind of suggestion.

But on the contrary, what we really find—and I think most people agree with it, and I will be happy to review this with all of the witnesses that you and I, hear and testify before every time this comes up—I don't think—I haven't heard anybody ever suggest that.

The Civil Rights Division is bogged down enough with every other kind of case, except education. They would hope that maybe within this huge Department, which we didn't even have, until a few years ago, that at least the Department of Education would be able to prosecute and enforce civil rights laws within education.

Mr. SINGLETON. Well, Mr. Conyers, all I am saying to you is this, with the bill as it is presently written, I am concerned that I will be dealing with not just educational issues, but transportation issues, housing issues, and the like——

Mr. CONYERS. Exactly.

Mr. **Singleton**. Well, these are things that are currently within the responsibility of other civil rights enforcement agencies.

Now, if I am to do all of those things, then there has to also be a concomitant, it seems to me, increase in resources to deal with them.

Mr. **Conyers**. Well, now that is a subject that we are very happy to deal with. If you are saying that you—assuming your fullest jurisdiction, turns on you are getting an increase in resources, you are talking to, perhaps, your No. 1 defender in the Congress for additional resources.

But tell me, where would someone go for a campus restaurant discriminatory issue? To whom do we go when you say the *Grove City* doesn't give me jurisdiction, I'm sorry, I would like to handle it—now, where does the student go from there?

Mr. **Singleton**. Where does the student go from there?

Mr. **Conyers**. Yes, where is the jurisdiction?

Mr. **Singleton**. No, no, what I tried to explain to you is if it is on the campus, I think that with something like S. 272, we would be able to get jurisdiction over that.

But if it is purely a commercial activity, purely that, and it is off campus somewhere, and it is selling services, if you will, meals to the community at large, it is not patronized at all by the school, that is something that I don't want jurisdication over. I would prefer to leave that to the EEOC and the Justice Department, and maybe State civil rights enforcement agencies.

Mr. **Conyers**. Well, the question though isn't about that example that you keep reraising. And maybe there is a real life case out there somewhere that bothers you tremendously. I am talking about the 97 percent of all campus restaurants that are based on, or near the campus, that are usually based or put in the student center building, that routinely——

Mr. **Singleton**. If they are placed in student center buildings, we could get jurisdiction over that.

I don't have any problem with that.

Mr. **Conyers**. Well, that is what I am trying to do—all I want to do is draw the line.

Let me ask you like this, restaurants on campus, discrimination in your jurisdiction or out of your jurisdiction?

Mr. **Singleton**. To the extent that they are using Federal facilities—I mean, not Federal facilities, I'm sorry, facilities which were created, or renovated, or with Federal funds, or there is some Federal financial assistance going into that program, yes.

Mr. **Conyers**. Well, like a basic student grant goes to the students, the basic education grant as is available at Wayne University, and their campus, their restaurant in the student center building is discriminatory, is that in your jurisdiction, or out of your jurisdiction?

Mr. **Singleton**. Presently, it is out of my jurisdiction.

Mr. **Conyers**. I see. Do you feel that it ought to be within your jurisdiction—that is what you are advising us, we make the law on that.

Mr. **Singleton**. Oh, thank you, sir, for clarifying that for me.

Mr. CONYERS. Now, do you want it in your jurisdiction, or do you want it out of your jurisdiction, since you have said it is out of your jurisdiction?

Mr. SINGLETON. Well, what I would like to have is a definition of program or activity that harkens back to the pre-*Grove City* decision in much the same manner as S. 272 would. That's what I would like.

Mr. CONYERS. Well, then the answer, I take it, is yes, that you would want the jurisdiction of a restaurant in a student center run by the university that discriminates?

Mr. SINGLETON. To the extent that there are Federal funds being used in any alleged discriminatory activity taking place there, yes.

Mr. CONYERS. All right. Let's try another one, that's too complex. Let's take discrimination in intercollegiate sports activity.

Mr. SINGLETON. OK.

Mr. CONYERS. And, again, as in most universities, there is a Pell grant. Is that discriminatory case within your jurisdiction presently?

Mr. SINGLETON. Yes.

Mr. CONYERS. It is presently?

Mr. SINGLETON. Wait a minute, let me clarify that, to the extent that we are talking about discrimination in any athletic scholarship.

Mr. CONYERS. Well, what about any other aspect that——

Mr. SINGLETON. Presently, no. We do not fund directly any intercollegiate athletics programs. To the extent that we get a handle on them now, is based on the use of a building, that may have been constructed with Federal funds, or renovated, or interest subsidies, or something of that sort.

Now, with a broader definition of program or activity, much like we had prior to *Grove City*, we would be able to reach them.

Mr. CONYERS. You would prefer that, you think that would be a more effective way to proceed?

Mr. SINGLETON. Definitely, yes. We didn't have any problem dealing with intercollegiate athletic sports prior to *Grove City*.

Mr. CONYERS. Well, then doesn't 700 give you that jurisdiction?

Mr. SINGLETON. Yes, and more.

Mr. CONYERS. Well, what is the more? Give me the example that——

Mr. SINGLETON. I don't know that I can sit here and give you an example——

Mr. CONYERS. Well, you have only given me one, you have been here for an hour, you have given me one. And the counsel has told me that that is a debatable case. Give me two.

Mr. SINGLETON. Well, they are all debatable cases. I mean, counsel knows that all lawyers would disagree about anything, even the weather that is outside.

Mr. CONYERS. Give me a second example for the record in 1985.

Mr. SINGLETON. In intercollegiate athletics?

Mr. CONYERS. Yes.

Mr. SINGLETON. I don't know that I could think of one that would be a good one right off-hand. Suppose there is some aspect of the program that is totally outside the university, it may be a program that the university puts on to attract kids for its athletic program, and it is funded entirely out of receipts from the sale of tickets, or something of that sort.

There, that might be such an activity. There may also be some other commercial activity. For example, maybe they are selling autographed balls, basketballs for example, that they buy with funds that they receive from the sale of tickets, and then they get the star players to autograph them, and then sell those balls somewhere, and they have a store——

Mr. CONYERS. What is the discriminatory action?

Mr. SINGLETON. Excuse me.

Mr. CONYERS. What is the discriminatory act in your hypothet?

Mr. SINGLETON. I am not giving you any discriminatory act, what I am trying to do is trying to set up an activity. I thought that is what you wanted, where we would not want to get involved.

Mr. MCKERNAN. Would the gentleman yield?

Mr. CONYERS. Yes.

Mr. MCKERNAN. To follow up on that, if in selling these autographed balls, the university refused to hire women to sell those autographed balls, would that be an act of discrimination you could prosecute, pre-*Grove City?*

Mr. SINGLETON. To the extent that the activity was totally off-campus, university building subsided with Federal funds was involved, and the purchase of the equipment and the payment of rent are all being funded by moneys that are not coming from the Federal Government in any manner, that probably would be a situation where we may not have jurisdiction.

But the thing is——

Mr. MCKERNAN. Well, let me stop you right there. You may not have had jurisdiction, pre-*Grove City,* and you clearly don't have it after *Grove City.*

With regard to pre-*Grove City,* you may not have had jurisdiction, even if that institution took students with Pell grants?

Mr. SINGLETON. That's right.

Mr. MCKERNAN. Under your interpretation of H.R. 700, would you have jurisdiction in that case?

Mr. SINGLETON. I think most assuredly, yes, in that situation.

Mr. MCKERNAN. Then why wouldn't you want to have jurisdiction?

Mr. SINGLETON. Well, the point is that is an enlargement of our jurisdiction.

Mr. MCKERNAN. I don't care whether it is an enlargement, or a shrinking of your jurisdiction. I mean, why as a matter of public policy, wouldn't we want to have a Government agency that is able to prevent discrimination in that activity, just as much in who they hire in the cafeteria that serves students?

Mr. SINGLETON. Well, Mr. McKernan, I mean the expression of the public policy would come from you.

Mr. MCKERNAN. That's what we are trying to decide——

Mr. SINGLETON. Well, the point is, if that is what you want me to do, if you are trying to expand the scope of our jurisdiction, then that is the determination that you have to make. But if you are trying to restore me to the point where I was, prior to *Grove City,* then this doesn't do it, it goes beyond that.

Mr. MCKERNAN. I yield back.

The CHAIRMAN. In the case, Mr. Conyers cited of institutionwide discrimination in an education institution, where there were several campuses, let's say one was all white, or almost all white, and the other was black, but only one of them received financial assistance. What would you do in the case of that nature?

Mr. SINGLETON. Where the campuses are separate and apart?

The CHAIRMAN. In the case where there is discrimination on only one campus?

Mr. SINGLETON. And which campus is getting the Federal aid, the one where discrimination is not taking place?

The CHAIRMAN. Yes.

Mr. SINGLETON. And you are asking me how we would deal with that now, or prior——

The CHAIRMAN. How would you deal with it under S. 272?

Mr. SINGLETON. We would deal with it in much the same way that we dealt with it, prior to *Grove City*. And that is——

The CHAIRMAN. Which was?

Mr. SINGLETON. We probably would not.

The CHAIRMAN. You would not deal with it?

Mr. SINGLETON. That's correct, because the Federal financial assistance was not going to that particular campus.

Now——

The CHAIRMAN. Even though they had let's say, one set of regents for all of the campuses, combined each of which are affected by what happens on every other campus, whose central operating budget affects all the campuses, who have personnel who visit all of the campuses, you still would not handle it?

Mr. SINGLETON. No, that case might be a little different.

The CHAIRMAN. Well, that would be the case, wouldn't it, under any institutionwide organization in any state?

Mr. SINGLETON. Well, I don't know, Mr. Chairman, that that is necessarily the case.

The CHAIRMAN. Well, let's assume it prevails in California. It is an institutionwide organization controlled by a boad of regents, and let's say the Berkeley Campus is receiving the Federal assistance, it is and let's further say that the Davis Campus, a physically separate campus, but under the same board of regents, discriminates. How would you handle it under S. 272?

Mr. SINGLETON. We would handle it in the way we would handle it, prior to *Grove City*, and that is we probably wouldn't handle it.

The CHAIRMAN. That is the essence of it. Do you deny that discrimination exists in the system?

Mr. SINGLETON. In that particular example?

The CHAIRMAN. Yes.

Mr. SINGLETON. What we would have to find is where the Federal financial assistance was in the particular program, or activity, in which the discrimination was alleged to take place. If we found none, then we would not assume jurisdiction.

The CHAIRMAN. Well, how did you handle the *North Carolina* case?

Mr. SINGLETON. I don't recall the *North Carolina* case.

The CHAIRMAN. Well, if you are not familiar with it, then we won't deal with it.

Mr. CONYERS. Mr. Chairman, if I could ask one final question of Mr. Singleton.

Suppose—well, I am not supposing about Michigan State University, they do have separate colleges, for example, the Justin Morrell and the James Madison Colleges, which do have additional admission requirements, above those of the university. Would these be covered under the Senate bill, if Federal funds went into the university directly, and the discrimination occurred in the Justin Morrell College?

Mr. SINGLETON. Mr. Conyers, I am sorry, I beg your indulgence in that particular example. Are these separate colleges?

Mr. CONYERS. They are.

Mr. SINGLETON. They are separate colleges?

Mr. CONYERS. Absolutely with additional admission requirements.

Mr. SINGLETON. What is the connection?

Mr. CONYERS. Well, they are all under the jurisdiction of Michigan State University, they are all part of the university, which receives Federal funds, so would any discriminatory offenses be reached by the Dole bill, if they occurred in the separate colleges?

Mr. SINGLETON. That is a very difficult question to answer from the hypothetical that you have given here. I think it would depend upon the circumstances involved, in terms of how we could define the program or activity.

It is conceivable that we could characterize that particular set of facts as the undergraduate program, and could conceivably get it, wherever it had occurred in that particular instance.

Mr. CONYERS. Suppose it was a graduate school, or veterinary college?

Mr. SINGLETON. Well, there, again, if they are set up as separate graduate schools, and the discrimination was taking place in one of them, it is conceivable that it could be characterized as a graduate program, and could be gotten that way. In fact, that is the way we used to deal with a number of these, prior to *Grove City*.

The CHAIRMAN. Thank you, Mr. Conyers.

Mr. McKernan, do you have anything additional?

Mr. McKERNAN. No, Mr. Chairman.

The CHAIRMAN. Mr. Hayes.

Mr. HAYES. No.

The CHAIRMAN. Again, Mr. Singleton, we thank you for your appearance before the committee, for your answers, and the time that you have taken. We appreciate it, and that concludes the hearing for the day.

Mr. SINGLETON. Thank you, Mr. Chairman.

[Whereupon, at 4:50 p.m., the committee was adjourned.]

CIVIL RIGHTS RESTORATION ACT OF 1985

MONDAY, MARCH 11, 1985

House of Representatives, Committee on Education and Labor, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary,
Atlanta, GA.

The subcommittee met, pursuant to notice, at 9:30 a.m., in the Urban Life Conference Center, Georgia State University, Atlanta, GA, Hon. Don Edwards presiding.

Members present: Representatives Edwards, Conyers, Hayes, Sensenbrenner, and Gunderson

Staff present: Karen S. Vagley, associate counsel, Committee on Education and Labor; Electra Beahler, minority education counsel.

Mr. **Edwards**. The subcommittee will come to order.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. I ask unanimous consent that the subcommittee permit coverage of this hearing, in whole or in part, by television broadcast or still photograph in accordance with the Judiciary Committee rule 5 and the appropriate rule of the Committee on Education and Labor.

Mr. **Edwards**. Without objection, so ordered.

Last Monday, in Philadelphia, PA, the House Judiciary Subcommittee on Civil and Constitutional Rights and the Committee on Education and Labor began the first in a series of regional hearings on H.R. 700, the Civil Rights Restoration Act of 1985.

It is the intent of this legislation to restore four civil rights provisions to their former vitality and effectiveness. Together, these four laws [title VI of the Civil Rights Act of 1984, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975] prohibit discrimination on the basis of race, color, national origin, gender, age, or disability in federally funded programs.

The principle embodied in these four laws, that the Federal Government should not subsidize discrimination, was established 20 years ago when title VI was enacted. And, it is threatened by recent Supreme Court decisions which have so narrowed the application of these statutes that an entity receiving Federal assistance is now free to discriminate in all of its operations except the specific program receiving Federal aid.

So, for example, if we fail to amend these four laws, a student enrolled at this university, this beautiful place where we are holding our hearings, who is denied access to computer science courses on account of that student's race, color, national origin, age, gender, or handicap, would be without a remedy unless she or he could trace the flow of Federal assistance to the specific computer course in which the student was denied admission.

These Federal laws were not intended to permit institutions receiving Federal aid to discriminate; it's that simple. The Supreme Court's action in recent years, frustrates that intent and we must, therefore, restore these four laws.

Mr. Sensenbrenner.

Mr. **SENSENBRENNER**. Thank you very much, Mr. Chairman.

This is the third in a series of hearings on H.R. 700. In the previous two hearings I think it has been quite obvious that there is really no controversy over whether the Supreme Court's decision in the *Grover City College* v. *Bell* case should be overturned. There is practically unanimous agreement that the Supreme Court erred in interpreting the legislative intent and that the application of title IX should be on an institution-wide basis rather than a course-by-course basis.

The controversy, however, revolves around whether H.R. 700 actually goes beyond the intent of its authors in simply restoring the law to its statutes before *Grove City* or whether there is a hind-end agenda contained therein to expand Federal power into areas which have not been recipient of Federal financial assistance.

There has been no great diversion of opinion of that subject from the witnesses that have testified before the subcommitee to date. A similar bill, H.R. 5490, was passed overwhelmingly by the House of Representatives last year, but was filibustered to death in the U.S. Senate.

One of the reasons that that filibuster was successful was that there was a problem with truth in advertising in H.R. 5490. The proponents said that it merely restored the law to its status before the *Grove City* case, the opponents very effectively showed that it went beyond that.

I am hopeful that we get answers to these types of questions during the course of the hearings today and also the subsequent hearings that we will be having in Washington, Chicago, Atlanta, and Sante Fe, so that we can craft a piece of legislation that overturns this Supreme Court decision and restores the right of entry into federally funded courses, but does not have a whole bunch of other extraneous issues that go beyond the thrust of the Supreme Court's decision in *Grove City,* and I am looking forward to some flexibility involved in crafting that piece of legislation so that the controversy that we have heard to date will be resolved before the bill reaches the floor.

Mr. **EDWARDS**. Thank you, Mr. Sensenbrenner.

We are pleased to have with us from Chicago, from Congressional District No. 1, a gifted member of the Education and Labor Committee, Congressman Charles Hayes.

Mr. **HAYES**. Glad to be here. No statement.

Mr. **EDWARDS**. We are also pleased to have with us from Wisconsin's Third Congressional District, a gifted member of the Education and Labor Committee, Mr. Steve Gunderson.

Mr. **GUNDERSON**. Thank you.

I think, in the interest of time, because you and Mr. Sensenbrenner have really indicated the goals and the concerns of this bill, I would like to ask unanimous consent that my particular statement may be made a part of the record.

Mr. **Edwards.** Without objection, so ordered.

Opening Statement of Hon. Steve Gunderson, a Representative in Congress From the State of Wisconsin

Good morning. I am pleased to be able to be here in Atlanta today with my colleagues and, like them, I am looking forward to hearing the testimony of the many witnesses who are taking the time to give us the benefit of their thinking on the Civil Rights Restoration Act of 1985.

There seems to be virtual agreement that the confusion and contraints created by the Grove City College decision on unfettered enforcement of several major civil rights laws must be addressed. Clarification is needed, and the sooner the better. And I think there is widespread agreement as well that some type of legislative action is essential to provide that needed clarification.

The bill we will be talking about today, H.R. 700, seeks to make clear once and for all the intent of Congress that no federal funds be used—ever—to subsidize discriminatory action or behavior. And you can sure that I support that belief. At the same time, we should not close our eyes to any problems that might exist in the way the bill, would achieve that desirable goal.

At the hearings we had in Washington last week, concerns were raised that even some of the principal sponsors of the bill agreed should be looked at. If there are ambiguities or other problems with the bill, this is the time to find out what they are and correct them. We want to be sure that when this bill come to the House floor for a vote, there are no lingering doubts about what exactly the bill would do and how it would be done and who would be affected. I believe that by addressing any legitimate concerns that might be raised about the reach of the bill as they are raised, we will be all the more certain of overwhelming passage of the bill. And the sooner that day comes, the sooner the confusion that now exists will be rectified. We will then know that in reaffirming the commitment of Congress to the protection from discrimination intended by these laws, we have done the right thing and done it in the right way.

Mr. **Edwards.** We are pleased, delighted, and honored to have as our first witness our former colleague in the House of Representatives, who represented so well this part of the great State of Georgia, also a former close associate and colleague of Dr. Martin Luther King, and, of course, the mayor of Atlanta, Mayor Young. Thank you for your hospitality, congratulations on this great institution that is showing us such warm hospitality, and we are really delighted that you are our first witness. You may proceed.

STATEMENT OF ANDREW YOUNG, MAYOR OF THE CITY OF ATLANTA

Mr. **Young.** Thank you very much, Congressman Edwards.

Let me welcome you to our city and thank you for coming for these hearings. I think that the city of Atlanta is one place where you can see many of the fruits of the kinds of comprehensive civil rights legislation that came out of the work of the Congress in 1964 and 1965 and was then renewed again in 1975. It is because of the fact that I perhaps am one of the more direct beneficiaries of this legislation, and because I think this city is, we decided back in the 1960's, that we were going to be a city too busy to hate, and that we were going to work to include all of our citizens in every aspect of our city, but even though we made that decision, it has been a constant struggle and I think we can demonstrate a certain level of success, but still there are forces which almost annually take us into court as a city administration for doing things that we are convinced is a part of the Federal mandate and also for doing things that we are sure are succeeding in helping to make us the successful city that we are.

I welcome this opportunity to testify on behalf of the Civil Rights Restoration Act of 1985. I see this legislation and the civil rights acts that it amends from several vantage points. First, I approach this legislation from the point of view of a mayor of a large and diverse city. Second, I see this legislation from the point of view of a former Member of Congress. And third, I view this legislation from the vantage point of someone who participated in the movement that led to the enactment of the Civil Rights Act of 1964 and assisted in the drafting of that legislation in 1965.

As mayor of Atlanta, it is my responsibility to run a city that is sensitive to the needs of all its citizens and provides opportunity for all Atlantans. My understanding of democracy is that one cannot govern without the consent of the governed. In Atlanta we have a richly diverse and growing population in which needs, expectations, and desires are constantly evolving. Our city's population is multiracial, multiethnic, and diverse in religion. We have citizens with various physical disabilities. The role of women is being redefined. The needs of our senior citizens are growing. Given these dynamics in our population, I believe that to govern this city fairly and effectively, the diversity of Atlanta must be represented throughout the decisionmaking process and in all of our agencies.

In addition to city government, Atlanta has many important institutions. For example, we have a strong business community which includes more than 400 of the Fortune 500 companies. We have great institutions of learning, both public and private. We have many cultural institutions. We have, I think, perhaps more than 100,000 university students in this region in some 29 public and private institutions.

All of these components influence the life of the city and help determine whether Atlanta functions for all of its citizens or merely a privileged few.

The history of Atlanta, like the history of our country, shows that many categories of people were denied full participation and equal opportunity to enjoy the benefits of our great nation. Blacks and other people of color, women, the handicapped, and very often our senior citizens were given second-class treatment. In the past two decades our national policy has been to protect the civil rights of the members of these groups, and we have enacted laws to enforce that national policy.

Strong Federal enforcement of civil rights is important to me as mayor of this city. The Federal Government is an important partner in our effort to provide opportunity and full participation in the affairs of this city for every citizen.

In Atlanta we have city ordnances which require minority and female business participation in city contracts, we have employment policies which promote inclusion and prohibit discrimination, and we have developed a transportation system that enhances the mobility of the disabled and handicapped. These are examples of our policies to ensure equality in every aspect of city life. The growth and development and success of this city is directly a result of the implementation of those civil rights actions, including all of our citizens. We are a city that has been notably calm, we do work together, we have had little or no massive racial violence at any time and a good part of that is the fact that very early we moved under the powers of this Civil Rights Act to desegregate our police force. We desegregated our police force and now have a police force that is approximately 50-50 black and white. It is 50 percent black and white at the top levels and it is 50 percent black and white throughout. We also appointed a young woman as deputy chief of police.

What we found as we include a racially balanced police force and women in the decisionmaking about that police force since most of the people who are most vulnerable to crime in any society are women, the elderly, and children, we have found that a sensitive woman who is also an experienced police officer with a degree in criminology from this institution, a master's degree in criminology from this institution, that she brings a kind of sensitivity to the total law enforcement and the racial balance brings a kind of sensitivity to the total law enforcements that has had crime dwindling over the last 4 years.

I think because of that, we have created that and the minority participation in the economy, we were able to pass a mass transit referendum in this city in 1971 in large measure because we agreed to set aside 20 percent of the contracts for any minority engineers and architects and contractors.

We had an integrated response from the labor movement and from the building trades and we found that when the community decided that everybody was going to participate in the prosperity, they were willing to vote to tax themselves to develop a mass transit system. We did the same thing with the airport only that airport was built with 25 percent minority participation and another 5 percent female participation and it maintains that level of participation in the concessions and subconcessions throughout the airport.

What this has done, I should say that that $8 million project was built on time and under budget so that it did not cost us anything to integrate it—what it has done, it has recreated an environment in this community that breeds confidence from the private investors and as a result of our airport, as a result of our mass transit system, we have had about 7 billion dollars' worth of new investment in this metropolitan area in the last year.

We now have three huge new complexes which are being proposed, some $10 million of square feet of new office space in midtown, downtown, and in Buckhead, and one of the reasons we find people coming here with these major multibillion dollar investment projects is that they are coming into a community that works for everyone.

I should also add while I am bragging about my city, that we probably have a lower unemployment rate, having generated about 100,000 new jobs in the last year, as compared with, say about 70,000 in New York which is four times our size.

So, integration is working, it is working for everyone and it is contributing in a major way to the success of this city, but still at this very moment we are in court challenging those minority participation laws and we are constantly needing the backup of the

Federal Government and a clear definition of the intention of Congress to include all citizens.

We are, I think by affirmation, one Nation under God, indivisible, and the only way that can be maintained is if it is maintained on a national level with the full power of the Federal Government behind it.

But we cannot carry this responsibility alone. We have neither the authority nor the resources to monitor civil rights complaints or to investigate and resolve all civil rights complaints. We cannot compel the cooperation of the many other institutions in our city that so heavily impact the life of this community.

If Atlantans suffer discrimination in any of the private and/or State schools, hospitals, businesses, programs, or activities, it negatively impacts what I am trying to accomplish here, but there isn't very much that I can do about it. There is a great deal that can be done if our Federal civil rights statutes are given full force and effect.

As a former Member of Congress, I understand the task that is before you. There are many different interests to be weighed. In our society, we value freedom and we like to see the involvement of the Federal Government kept to a minimum. However, for millions of Americans the intercession of the Federal Government has meant freedom.

Civil rights has been a bipartisan commitment. Federal judges, notably judges appointed by President Eisenhower, had the courage to enforce the first amendment and permit demonstrations for civil rights in the 1950's and 1960's.

The Congress passed civil rights legislation with bipartisan support. Much of the legislation was enacted under a Democratic President, but many of the enforcement regulations were the product of the Nixon administration. Our Nation has made the choice to involve the Federal Government in protecting civil rights. This is no time to retreat.

I would say the broadest implementation of these acts was probably done under our former Governor of this State, President Jimmy Carter, who by his appointment has fulfilled much of the mandate of the Federal Government by providing the administrative undergirding for the enforcement of this legislation.

The legislation before you would redress a problem arising from a Supreme Court interpretation of the intent of Congress and the meaning of program or activity covered by Federal legislation to protect civil rights. I would like to point out that the Court based its interpretation not on the original title VI, but on a later statute which adopted the language of title VI because this original act had proved so effective. I believe that had the Supreme Court examined the history of title VI, it would have reached a different conclusion about the intent of Congress and the breadth of coverage mandated by the nondiscrimination requirement.

I served with the Southern Christian Leadership Conference under Dr. Martin Luther King, Jr., during the period of civil rights activity that immediately preceded the passage of the Civil Rights Act of 1964. I participated in the drafting of that bill and the efforts to secure its enactment.

The goal of the civil rights movement in this instance, and our purpose in pushing for Federal legislation, was to dismantle the system of segregation and racial discrimination that had pervaded our society since the colonial era.

Given the Nation's legacy of State sovereignty and the separation of Federal and State authority, we had to find constitutional authority for a strong Federal Government role in the enforcement and protection of civil rights. It was determined that the commerce clause gave Congress the power to regulate in the areas of public accommodations and employment.

However, schools, hospitals, social services, museums, and many other important institutions were segregated and discriminated against blacks in every aspect of their operations.

Yet there has been ample precedent for using the Federal Government to intercede on behalf of civil rights. Executive orders going back to President Truman had prohibited discrimination in Federal programs and agencies. The Civil Rights Commission had recommended that the executive branch had the authority to prohibit discrimination in any Federal program. The Congress determined that it could use the spending power as a basis for requiring nondiscrimination in programs receiving Federal funds.

This is the background of title VI of the Civil Rights Act of 1964. Title VI brought the Federal Government into partnership with those people of good will throughout the country who were working toward a more equitable society.

It would be tragic if the Supreme Court were to place all sorts of limitations and restrictions on the authority of the Federal Government to investigate civil rights violations and narrowly define the intent of Congress in 1964.

The purpose of the Civil Rights Act of 1964 was to create a national and uniform policy of nondiscrimination. The *Grove City* decision flies in the face of that policy and purpose. It seems to me that this decision can have ridiculous consequences.

For example, it would be ridiculous to allow the police athletic league to deny girls the right to participate when the bureau of police services is required to afford women the right to qualify as police officers. Or it would not make sense to suggest that Federal aid to Atlanta's police should not trigger an obligation to abide by nondiscrimination requirements in the entire department of public safety.

But a narrowed definition of the intent of Congress on the use of Federal funds could have very unfortunate results, allowing discrimination in segments of our society where our citizens and taxpayers are otherwise without any protections from the prejudices of individuals.

If our national policy of nondiscrimination is to have any real effect, civil rights measures must have the broadest possible coverage. We cannot allow artificial and arbitrary loopholes to leave our citizens unprotected.

None of us is perfect. Each of us, no matter how well intentioned, has our blind spots. I appreciate the groups in our city who have called my attention to discriminatory situations which I did not anticipate. I cannot see life through the eyes of women, handicapped persons, or the elderly.

But I can learn from them, and work with them and take action to promote the rights of all citizens. To eliminate discrimination based on race, sex, handicap, or age will take generations of Americans working together, trying to understand each other, trying to appreciate our differences, and struggling to overcome our fears. It will also take a strong partnership between the people of our Nation and our Federal Government.

In 1964 the Congress and the Nation made a practical commitment to a tremendous ideal. We must not retreat from that commitment.

Mr. EDWARDS. Thank you very much, Mayor Young, that is a very purposeful statement.

The gentleman from Illinois, Mr. Hayes.

Mr. HAYES. I know the mayor has a very busy schedule and I——

Mr. YOUNG. Take all the time you need.

Mr. HAYES. I was glad to hear you go through some of the successes that you have had here in the city of Atlanta and I know that is not the case in many of the cities where unemployment is very high.

Education takes on an important meaning and the course of training programs and all the things that are necessary if we are going to have any opportunities for many of our disadvantaged to find a job today or in the future.

As you were going through your statement, my mind trickled back to what I read in the press by the journalist who both of you know very well. He called for the end to the Civil Rights Commission because of its current direction under the current leadership.

It brings to mind the question that bothers me very much, the enforcement of H.R. 700, if it should happen to pass, and I hope it does, and your statement indicates your support for it, the basic charge is that H.R. 700 goes beyond *Grove City* and the administration, it seems to me, to favor more the Senate counterpart which I think that we have to go beyond justice and tackle all vestiges of discrimination if we are going to have the kind of civil rights that you talked about that began with its roots in 1964.

My bottom line question: Do you feel we do have some problem now under this current position of the Civil Rights Commission really enforcing any meaningful civil rights statutes? It seems to me we are going in the opposite direction from which we began. This concerns me very much. I would like to have your comments.

Mr. YOUNG. I think you are quite right, Congressman Hayes, and I guess I do like to remind people that we are a peaceful and prosperous part of our Nation. We have not always been so. This area of our Nation could very easily look like Northern Ireland or southern Lebanon.

The thing that made the difference was not only a nonviolent commitment on the part of the black leadership, but a court system that essentially had the tools, tools under a Republican administration, because most of the judges that decided the civil rights cases were looking basically for handles also on which to redress a grave answer that they saw.

These are not liberal men, by any means. They were southerners appointed by a Republican administration and yet they understood the gravity of our situation and the potential explosiveness of it and they used every possible remedy that the law gave them. The have used the Civil Rights Acts very well and the courts of the South have needed the kinds of tools that are in this legislation to see to it that we can get this far and do this well.

Mr. **Hayes**. You were a Member of Congress during the time some of these civil rights statutes were passed and it was your idea, was it your feeling and idea at that time that the scope of the coverage of these laws was to be narrow or broadened into other areas? This is where I think we are now.

Mr. **Young**. When the first laws were passed, I think both you and I were demonstrators in Birmingham?

Mr. **Hayes**. That is right.

Mr. **Young**. And Congressman Edwards came down then as a very supportive Member of the Congress and saw very clearly that the South was in an explosive state and had there not been the power of the Federal Government being brought to bear on this situation, we would not have had the legal and moral authority to respond to it. Let me say that by and large, we wanted to. We wanted to, people who lived here knew the situation was dangerous, but no local politician or no State politician could take any action without being voted out of office. It was terribly unpopular and when you are flying in the face of 100 years of tradition, you really do need the moral authority and outside independent force to make it possible for you to do what you want to do.

Time after time I sat with businessmen and women and with judges, where they knew what was right, they wanted to do what was right, they saw the dangerous consequences if we were not able to do what was right, but they needed the courts to tell them that they had to do it.

So I say that the comprehensive nature of this legislation is exactly the intent of the Congress and it is exactly the remedy that was demanded by the explosiveness of the times in which we live.

I might say that now we think we have gone a little beyond that, but the movement has moved north and a similar kind of combination of tensions of race and class, particularly with the high level of unemployment, that this is not a southern problem anymore—and in fact, I think the South in general is far ahead of the North on this issue. I think it is the courts of our Nation and the people of our Nation that need the backing of the Federal Government as they attempt to address the potentially explosive situations that are occurring in many of our cities of the North.

Mr. **Hayes**. Thank you, Mr. Mayor. Thank you, Mr. Chairman.

Mr. **Edwards**. Thank you.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Thank you very much. Mayor, I would like to commend you for a very strong and forceful statement on behalf of the cause of civil rights. I think it is significant that the two Republican members present here today come from Wisconsin and if you look back at one of the little noticed footnotes of history, our State attempted to secede from the Union in 1857 over the issue of slavery because people were against it and we could not tolerate slavery States within the Union. Calmer heads prevailed, I guess the abolition went south 4 years later, so we are here today.

The lawyer in me makes me look at the specific piece of legislation that is in front of you, particularly in light of the very troubled history of last year's bill, and its eventual defeat in the Senate at the end of the session. I think it is quite plain that the coverage of this bill is considerably narrower as it applies to State and local government than it applies to the private sector of our economy.

For example, if the department of public safety accepts Federal funds in Atlanta, this bill has the entire activities of the department of public safety covered. However, if the health department does not accept Federal funds, there is no similar coverage in the health department and yet at the same time in the private sector if one entity of General Motors accepts Federal funds, then all of General Motors, including their franchises and their dealers are brought in underneath that.

How can you defend the considerably narrower application of the protections in this bill to State and local governments than applies in the private sector of the economy?

Mr. **Young**. Well, I am not sure that I can. I would just as soon have it broadened to cover government, and let me say there isn't anybody any more committed to civil rights than I am, but in the rush and bustle of trying to run a government, even I forget. We looked around and after appointments were made, we had white men and had black men, we had a few black women. We had no white women. When somebody called that to my attention, and it has been my policy both as a Member of Congress and in the city government, my congressional staff was half and half, black and white, half and half male and female. We were able to maintain that balance through the 4 years I was in Congress and we did the same thing at the United Nations amongst Ambassadors and top level staff at the United Nations.

I am just convinced it works well that way. But in city government, with 8,000 employees, we found that we are a city that is now predominately black and we found that whites were being neglected.

Now, I don't know that would come under the law, but certainly once the principle was established, and it was called to my attention, we have sought to see to it that every aspect, every aspect of our society is included in the decisionmaking. And so that I think the principle needs to be firmly established throughout government as well.

Mr. **Sensenbrenner**. Would you extend the coverage of this bill to anybody who received a license to do anything from the city of Atlanta?

Mr. **Young**. Well, of course I would, but that may be—we do that to some extent with city ordnances. We make sure that anybody applying for a permit when they apply for a permit, we talk with them about their hiring policies, we talk with them about the way they are going to conduct their jobs and yet we don't have any enforcement. If this kind of aspect were added to the bill, we certainly wouldn't object.

Mr. **Sensenbrenner**. Let me ask you one other question.

In the last couple of weeks, the U.S. Commission on Civil Rights issued a report entitled, "Toward An Understanding of States" which refers to the *Stott* case relating to hiring practices in Memphis. There was a supplemental statement filed by the two Democratic appointees to the Commission that said to the effect that civil rights laws were not passed to give civil rights protections to all Americans, they were passed just to give protections to a few Americans.

Do you agree with that statement?

Mr. YOUNG. Well, yes and no. I think at the time we were basically concerned with the poblems of blacks, but when Congressman Edwards chaired the committee for the extension of the Voting Rights Act, we had realized very clearly by that time that there was an equally unconstitutional discrimination against Hispanics, so Congresswoman Barbara Jordan and myself worked with Congressman Edwards to extend the Voting Rights Act to Hispanics.

I am convinced that rights have to be inclusive. We are now in this city experiencing for the first time immigration of Asian population. That is something new to the South. But we have taken a specific—I have asked the commissioner of public safety to make a special effort to recruit and train young Asians as part of our law enforcment and in looking around for employment in city government. We want to make sure that this Asian community is represented in the government of our city because we believe that you govern only by consent of the governed and if people are left out of the decisionmaking, they don't give their consent to be governed and your government is not nearly as sensitive enough. That is where you have problems when people don't have access to the decisionmaking and the power of your society both politically and economically.

So anything that we can do to include people, we welcome.

Mr. SENSENBRENNER. The statement of Commissioners Ramirez and Berry was in a report dated January 1985, so we are not talking about back when there was a need to protect the civil rights of blacks and Hispanics to assure their right to vote and assure their right to have that vote counted and counted effectively and not gerrymandered into smithereens, so the two commissioners' statements relate to the current situation.

Do you agree with them that the civil rights bills should not apply to all Americans, but should just apply to a few?

Mr. YOUNG. No; I don't, I believe they should apply to all Americans, particularly the handicapped.

Mr. HAYES. Would you yield? I would like to see——

Mr. SENSENBRENNER. If I have any time left, I yield.

Mr. HAYES. Isn't it a fact, though, that civil rights laws were passed a few years back in order to make democracy work for all people, that was the purpose? You wouldn't have needed civil rights laws if democracy had been applied as we thought it should have been applied. In order to make it work, you had to have laws and these laws were passed to apply to everybody. But it happened to be that blacks were so far behind they had some catching up to do and they still have catching up to do.

Mr. YOUNG. May I add——

Mr. SENSENBRENNER. If I can reclaim my time, I think that they ought to apply to everybody and I very strongly disagree with the statement of Commissioners Ramirez and Berry that civil rights laws were not intended to apply to everybody, but it seems to me that one of the reasons the civil rights movement has gotten off the track is that there are those who would like to use the civil rights movements to score partisan points to get votes for particular candidates rather than to recognize the fact that our Nation is only as strong as the weakest link in the chain and that we ought to work to strengthen the weakest link in the chain so all Americans can advance.

Mr. YOUNG. I would hope that Dr. Berry, whom I know fairly well, would not believe that these laws should not apply, say to the handicapped. We have a population that is about 15 percent handicapped, the black population is 10 percent, and as we grow older and live longer, I think we are going to find that all of us sometime in life are going to be handicapped and constructing a society for the handicapped under the civil rights laws seems to me just makes good sense.

Mr. SENSENBRENNER. My wife happens to be a paraplegic, so I am very aware of the necessity to protect the handicapped; at the same time she is turned off by politicians who wear buttons in their lapels that say, help the handicapped, when they really don't want to help bring them into the mainstream of our society.

The last thing a handicapped person wants is to be looked at as an odd-ball because they are handicapped. They want to be treated just like everyone else and that is what I think the intention of the civil rights laws were that were passed 10 years ago to protect the handicapped. You were in Congress and I wasn't.

I yield back my time.

Mr. EDWARDS. Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman. Thank you for testifying. I come from the Education and Labor Committee perspective. We are not nearly as trained or as talented as our Judiciary Committee members when it couple to legal technicalities. We are more interested in general product goals and we will leave the legal technicalities up to them.

Let me ask you initially if you believe that in this Civil Rights Restoration Act, we ought to be restoring the pre-*Grove City* interpretations on title IX or should we be using that as a mechanism to expand civil rights enforcement in this country?

Mr. YOUNG. Well, I am for ways for expanding civil rights enforcement and let's take the question of women. I think that that is the problem we are going to have in the 21st century, in this city. I think all the handwriting was on the wall that the problem of the 21st century is going to be the problem of redefinition of roles of women.

It is going to impact every aspect of our society, and no household will be able to escape it. We are not able to escape it already and I think it is important that title IX—for instance, our police force must be 15 to 20 percent women by now, and we find that that makes for better law enforcement. But, if women are not going to be given equal ranks in physical education and the opportunity to compete as well—I am so much in favor of title IX because I was one of those that was not quite big enough to play football and basketball, so, title IX, in protecting the rights of women, also protects intermural athletics; it protects those people who are not 6 feet 10 inches and 275 pounds. If you look at budgets of major institutions in this Nation, they are all football and basketball, and you have the budget of a 40,000-person institution focused on the well-being of 150 people.

There is something about that that doesn't make sense, particularly when you see your Armed Forces where half of the applicants can't qualify, at one point in our history. Title IX, by forcing the universities to include women, forced the universities to do more for all of the students in physical education.

So, actually, small men who were not super jocks, benefited probably more than women by title IX. And, I think the society benefits totally by title IX. As much as we can extend that and expand that, I think the better off we are going to be as a society. I am prejudiced. I have three daughters and just one son; I have been very sensitive. My youngest daughter had the fight of her life, almost got kicked out of grammar school because they wouldn't let the girls play touch football. That didn't make any sense at all. But you are flying in the face of all kinds of traditions.

I might say that, fortunately, one of our junior high school teams in Atlanta did have a young lady that was a quarterback and she just happens to be the best passer in the school. Fortunately, I think for a lot of folks, she decided not to play high school football, but at those ages, 11, 13, and 14, when physical abilities are being developed, young women ought not to be discriminated against; if they are not discriminated against, they will perform more adequately in every aspect of their lives.

You just look at—we have a Peachtree Road Race here that attracts about 35,000 runners; it breaks down half and half, men and women. The women don't come in, they, the women don't come in front of the world class men. But right behind the first 50 or first 25 of the men, the women start coming in, but this is because of an activity, for the most part, pursued outside of our universities. And when we look at President Reagan praising our Olympic victories, we need to remember that it was title IX that got a lot of these young women the opportunity even to compete in the sports that enabled them to achieve those victories for our country.

Mr. GUNDERSON. Is it the opinion of you or your city legal adviser that H.R. 700 does expand the civil rights enforcement?

Mr. YOUNG. No; I am not sure and I have not had a chance to have our city's legal counsel go over the bill as it is presently written, but again, our city attorney had an opportunity to go to Harvard Law School, largely because of the Civil Rights Act, and I am sure there is no way that she would be for limiting the opportunities that could be expanded by this bill.

Mr. GUNDERSON. As the mayor of what you called the city too busy to hate, to what level ought Government regulate in the area of civil rights enforcement, to what level ought that descend? By that I mean, as an example, let's assume Coca-Cola has a large Government contract, how far down ought we take Government regulating, Government enforcement, from the perspective of this financial basis?

Mr. YOUNG. I think it ought to be right down to the janitorial service that cleans up at night and right up to the office of the president.

Mr. **Gunderson**. Would you include, for example, all Coca-Cola distributors across the country?

Mr. **Young**. Absolutely.

Mr. **Gunderson**. And all stores who sell the product?

Mr. **Young**. I think you may have some problems of enforcement, but I would err on the direction of including everybody because there is a selective enforcement of law and I doubt that any city attorney or any Government agency would be bothering to file suit against a local grocery store unless that grocery store were in a neighborhood where there were racial incidents that were creating a problem in which case the law would be there to help.

I see the law as a guide and standard for the society and I think that when the law is very clear, it compells us to work toward its implementation and I think that the responsibility of the law is something that comes from the law abiding allegiancies that are developed in our schools and in the workplace in our cities as a whole.

When we know what the law is as Americans, that was true of the civil rights laws—once the law changed, I had the experience of being in a situation in a restuarant in St. Augustine, FL, where a waitress poured coffee on us and where we were thrown in jail and where a mob just about ganged up on us and tried to tear everybody apart in June. On the second of July, the civil rights bill was signed by President Lyndon Johnson.

On the fifth of July, we went back to that same restaurant and that same person was so glad to be able to serve us and was totally polite and courteous and responsive to the law and there wasn't any policemen standing there making her serve, it was just that under one circumstance she was having to take on the burden of going against 100 years of southern tradition, which she wanted to do, but which would have required a lot of suffering and a lot of struggling in a community for her to be the one to break those laws.

Once the Federal Government said that that law had changed, a great burden was lifted. It fulfills what one of our civil rights leaders said a long time ago, that the struggle for human rights in America is a struggle to save black men's bodies and white men's souls.

I think a burden was lifted from that women's soul when that bill was signed into law and I think the South appreciates it. Nobody has been around here with bully clubs and with injunctions forcing the South to comply. The thrust of it is that there has been a minimum of pressure on southerners to comply and yet there has been an overwhelming compliance to the civil rights laws across the South and that has only been possible because of the mandate of the Federal Government.

Mr. **Gunderson**. Thank you, Mr. Chairman.

Mr. **Edwards**. With regard to the expansion of the law that is alleged by some to be in H.R. 700, I would like to point out for everybody's information that the drafters of the bill were instructed by Mr. Hawkins, myself, and many others that there was to be no expansion of the law.

H.R. 700 is designed to return the law to where it was before the unfortunate decision of the Supreme Court and we haven't had any witness that persuasively argued or made a case that H.R. 700 would expand the law. We don't intend to expand the law. All we want is to return to the good old days.

I might also point out, the case suggested by the distinguished gentleman from Wisconsin, Mr. Gunderson, the Coca-Cola Co. does not receive Federal aid, it doesn't need it, in fact the Government could get aid from the Coca-Cola Co.

So, of course, it would not apply.

Last, I think it is significant that our first witness in the South is Mayor Young. Your hand and your influence have been part of every civil rights bill in the nearly 25 years that I have been in Congress. You have been an important voice and we thank you very much for your eloquent testimony. It is so very helpful to the deliberations of these two committees.

Thank you, Mayor.

Mr. YOUNG. Thank you.

Mr. EDWARDS. Our next witnesses will constitute a panel. We are pleased to have as a panel, Ms. Jondelle Johnson, who is executive director of the NAACP here in Atlanta, and Mr. Jonathan Zimring, attorney here in Atlanta, GA.

Ms. Johnson, I believe you are first, you may proceed.

Without objection, both full statements will be made part of the record.

STATEMENTS OF JONDELLE JOHNSON, EXECUTIVE DIRECTOR OF ATLANTA CHAPTER OF THE NAACP; AND JONATHAN ZIMRING, ESQ.

Ms. JOHNSON. Mr. Chairman, and members of the subcommittee, my name is Jondelle Johnson, I am executive director of the Atlanta chapter of the NAACP. I appreciate very much the invitation which you have extended to me to appear before the subcommittee to speak about the importance of the proposed Civil Rights Restoration Act in assuring that our Government does not support discrimination on the basis of race, sex, religion, or national origin.

Before I begin, I want to compliment the chairman and the entire subcommittee for bringing its hearing to the South. I commend you for holding hearings around the country, and especially in the South, on this issue. I hope that other committees of Congress will find the occasion to hold their proceedings in places outside of Washington from time to time.

As a life-long resident of the South who has been involved in civil rights, education, and community work for most of my adult life I know personally what life in the South was like for black citizens before the Federal Government passed legislation barring discrimination.

I also know how difficult it has been to assure effective enforcement of nondiscrimination over the years, and the central importance of continuing strengthened enforcement in order to reach the goals established more than 100 years ago in our constitution, and more than 20 years ago in statutory law.

I would like to say in summarizing that blacks in the South continue to have limited opportunities at all levels of education. For example, in the largest State universities in the 11 Southern States black enrollment remains small and considerably below the percentages of blacks of college age.

In fact, it does not appear that State universities receiving Federal support are moving any faster than private colleges to desegregate. Both private and public colleges and universities in the South remain far behind in desegregation of schooling and opportunities.

The pattern of exclusion and discrimination is not confined to higher education. We also find the same problem in the secondary education, and vocational area where blacks are usually started through a certain segment of vocational education and when teachers in the secondary schools act to send students who ask for jobs or job training. They are always asking for blacks. The studies show they usually asked for black students.

We also find the lack of enforcement. And since we have had this recent law passed, that we are trying to reaffirm, generally, we find that in our daily work we are having a great deal of problems and trouble getting our fair share, our justice in certain cases, in fact, in all cases.

We filed a suit against the city of Alphareta, against the housing and urban development, and because we charged them with not building public housing, plotting to keep public housing from being built in an affluent section of the county, north Fulton, after the ruling came out last year. The year before last we noticed a difference in the tone of the defendents and also in the courts. We lost that, and we had to appeal that case although we had legitimate grievances and legitimate witnesses.

Another case in point, and I will be through, is a case, that class action administrative complaint that we filed against Fort McPherson and Fort Gilliam, January 1, 1983, alleging discrimination against civilian employees. And we were making excellent progress until that ruling came out and the local EEOC office and the Army ruled against us. We had to appeal that to the U.S. Commission on Equal Opportunity in Washington, DC.

Again, I would like to thank you for the opportunity of allowing me to be here and we would urge that Congress pass this bill, H.R. 700, to restore the civil rights restoration.

[The prepared statement of Jondelle Johnson follows:]

Prepared Statement of Jondelle Johnson, Executive Director of Atlanta Chapter of the NAACP

Mr. Chairman and members of the subcommittee, my name is Jondelle Johnson, and I am the executive director of the Atlanta Chapter of the NAACP. I appreciate very much the invitation which you have extended to me to appear before the subcommittee to speak about the importance of the proposed Civil Rights Restoration Act in assuring that our government does not support discrimination on the basis of race, sex, religion, or national origin.

Before I begin, I want to compliment the chairman and the entire subcommittee for bringing its hearings to the South. I commend you for holding hearings around the country, and especially in the South, on this issue and hope that other committees of Congress will find the occasion to hold its proceedings in places outside of Washington from time to time.

As a lifelong resident of the South who has been involved in civil rights, education, and community work for most of my adult life, I know personally what life in the South was like for black citizens before the federal government passed legislation barring discrimination. I also know how difficult it has been to assure effective enforcement of non-discrimination over the years and the central importance of continuing strengthened enforcement in order to reach the goals established more than a hundred years ago in our constitution and more than twenty years ago in statutory law.

The need for vigorous enforcement of non-discrimination in the South is not a part of history. Throughout the South today we see signs of the need for re-doubled efforts and more effective enforcement of regulations and laws prohibiting racial discrimination. In many areas of public life, including education, job training, social services, local and state government services, health care, the evidence is clear that racial discrimination continues to be a substantial problem.

Blacks in the South continue to have limited opportunities at all levels of education. For example, in the largest state universities in the eleven Southern states black enrollment remains small and considerably below the percentages of blacks of college age. (See Table #1.) In fact, it does not appear that state universities receiving federal support are moving any faster than private colleges to desegregate. (See Table #2.) Both private and public colleges and universities in the South remain far behind in desegregating of schooling and opportunities.

The pattern of exclusion and discrimination is not confined to higher education. In 1980, a careful study of post-secondary vocational technical schools in Georgia concluded that "Georgia's vocational education programs are . . . race biased . . . Black men and women are less likely to be enrolled in technical courses than whites or other minorities. Black men take trade courses at higher rates than white men while black women are three times as likely to take occupational home economics as white women."[1] In reviewing changes, the author of this fourteen month study found that "progress in enrolling women and minorities in a wide-range of courses has been so small that the changes have come in spite of educators." Finally, the author concluded that the schools did not even proposed solutions to major problems of race and sex bias.

This pattern of racial discrimination also was discovered by the same author in a later study of vocational education in high schools throughout Georgia.[2] The study not only found that there were patterns of racial and sex stereotyping, but also that more than half the surveyed coordinators of the vocational education programs had received requests by employers for students of a particular race.

Other studies conducted in the last several years in the region show similar patterns in their fields. Problems with the distribution of assistance and aid have been found in state social service programs,[3] state and local government employment and services,[4] general revenue sharing,[5] education,[6] and basic services.[7]

These reports only confirm what I know from my own work with the NAACP. Each day dozens of people contact my office for assistnace. Many complain about problems of employment; denial of services from private and public agencies; and from a lack of fair treatment and opportunity. There are almost more credible complaints of racial discrimination than the NAACP and other organizations can handle in the Atlanta area. In places such as South Georgia, the coastal areas of South Carolina, or South Mississippi, there are even fewer resources than in Atlanta to investigate and document credible cases of racial discrimination.

While the NAACP often seeks to secure voluntary compliance when racial discrimination is evidenced, we have had to sue both private and government agencies over the issue. Our docket is rather full and our resources are heavily taxed because of the demand of this kind of litigation.

We have taken several cases in the past[8] but I do want to mention one of them that shows the need for vigorous enforcement. In 1980 the NAACP filed a complaint with the Justice Department and the Revenue Sharing Department stating that the revenue sharing monies going to the City of East Point were being used to further discriminate agaisnt blacks. We charged that there were no black department heads and no blacks in supervisory positions; black females comprised less than three percent of the 450 female employees in City Council; had no black commissioners and they had no blacks on the board, in any of the agencies, and the City Council itself was all white. The City Council had appointed no blacks to the Commission of boards and agencies and they had also adopted an affirmative plan that was the same one that they had for 15 years. It was inadequate. There was also a difference in the recreational facilities for blacks and whites, as well. Today, because of Title VI of the Civil Rights Act, East Point has a black Commissioner, black department heads, and a number of blacks have been placed in supervisory positions. They have also adopted an affirmative action plan that is more in line with equal opportunity.

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[1] See Looney, "The Unfulfilled Promise of Vocational Education": A Look at Sex and Race Equity in Georgia, the Vocational Education Monitoring Project of the American Civil Liberties Union Foundation of Georgia, July 1980, p. 56.

[2] Looney, "Preparing Students for Work": An Evaluation of Coop Programs in Georgia, Vocational Education Monitoring Project, the American Civil Liberties Union Foundation of Georgia, May 1982.

[3] See Kporha, "Social Services in the South": Southern Governmental Monitoring Project, The Southern Regional Council, 1979.

[4] See "Affirmative In Action": Public Employment in the Rural Black Belt, Southern Regional Council, February, 1980; "Fair Share? Race and Sex Disparities In Southern City Employment," Southern Regional Council, April 1979.

[5] "Discrimination and Revenue Sharing in the South," Southern Governmental Monitoring Project, Southern Regional Council, December, 1975.

[6] "A Decade of Frustrations," Black Belt Schools of Georgia and Alabama in the 1970s, Southern Regional Council, 1981.

[7] "Working Paper, Racial Discrimination and Electric Utility Cooperatives in the South," Southern Regional Council, forthcoming.

[8] Other cases involving the NAACP on Title VI include litigation and administration complaints against Grady Hospital in Atlanta; Thomasville, Georgia; and Fulton County Schools.

Because of the wide range of professional and personal evidence showing the continuing, pressing need to stop racial discrimination, the Congress must take action to overcome the limitations which the Supreme Court established in the existing statutes in the *Grove City College* case. From my own experience, I believe that it is quite clear that racial discrimination will continue, and will increase, if the interpretation of the *Grove City College* governs the way in which Title VI of the Civil Rights Act is enforced in the future. We need to enlarge, not limit, the effective tools for barring racial discrimination.

The basic problem with the *Grove City College* opinion is two-fold: First, it allows institutions to recieve government support on one hand and to discriminate against people because of race with the other hand. Second, it reduces the power of enforcing civil rights laws which are already difficult to enforce.

With all due respect to the U.S. Supreme Court as an important government institution, I do not understand how the Court can believe that government should be permitted to cut off its own funds only from those parts of an institution which is found to be conducting race discrimination. If an agency or institution discriminates in one service or one department, the whole institution is and should be responsible.[9] On principle, I believe that the government should have the power to determine that no federal funds will go to any parts of agencies which permit parts of the organization to discriminate.

Equally important, The limits of *Grove City College* will make enforcement of nondiscrimination extremely difficult in the future. Imagine just for a moment what would have happened if this approach to prohibiting racial bias had been used to dismantle segregation in the South. In order to integrate a Southern state government come under this approach, fedeal funds could have continued to support each division of state government until it was shown, one by one, that every department was segregated by race.

Today, enforcement is similarly constrained. The opinion of the Court will require a great deal more resources to enforce the law against each part of each institution. It will encourage institutions to set-up artificial divisions which allow it to discriminate in one area and receive federal funds in another. The opinion will encourage institutions to believe that it may discriminate with federal support so long as the federal dollars do not go into the hands of the people who actually discriminate. In all, the *Grove City College* opinion will tell Southern institutions that they can find ways in which to discriminate and still receive federal monies.

The task before groups like the NAACP of Atlanta is an enormous one. Racial discrimination continues to exist in too many areas of public life of the South. Today we need even more effective methods of fighting racial discrimination. Regrettably, the *Grover City College* case offers us only additional limits, requires more resources in enforcing the law, and sends a signal that the federal government is not as serious as it once was in prohibiting racial discrimination.

The Civil Rights Restoration Act, which members of the subcommittee have cosponsored, is needed in order to restore the tools for enforcing non-discrimination and the government's resolution to do it. It is important that the Act apply not only to educational institutions, but also to all other institutions receiving federal funds.

For many years, I have hoped that in my lifetime I could say that real progress has been made in ending racial discrimination in the South. In recent years, I have begun to see disturbing signs that the progress will not continue. Only with new initiatives like the Civil Rights Restoration Act can we regain the momentum in enforcing non-discriminating. The government of all the people should not support programs which discriminate on the basis of race against any of its people. It is a simple proposition and one which I hope you will restore with the Civil Rights Restoration Act.

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[9] This is especially connected since most grants from the federal government include administrative and overhead cost which help to support the whole institution's operations.

TABLE 1.—DESEGREGATION IN LARGEST STATE UNIVERSITIES [1] IN 11 SOUTHERN STATES: FALL 1982

University	Black enrollment	Black enrollment as percent of total
University of Alabama	1,452	9.0
University of Arkansas	878	5.4
University of Florida	1,735	5.0
University of Georgia	1,294	4.9
Louisiana State University	1,924	6.1
University of Mississippi	715	7.5
University of North Carolina	1,917	8.6
University of South Carolina	3,065	12.4
University of Tennessee	1,215	4.4
University of Texas	1,311	2.7
University of Virginia	1,165	6.8

[1] Main campus only.

TABLE 2.—DESEGREGATION IN SELECTED PRIVATE COLLEGES: FALL 1982

College	Black enrollment	Black enrollment as percent of total
Mercer University, Georgia	398	13.4
Tulane, Louisiana	428	4.0
Duke University, North Carolina	438	4.4

Mr. EDWARDS. Well, thank you very much, Ms. Johnson. That is really very helpful testimony.

Mr. Johnathan Zimring, partner in the law firm of Remar, Arnold & Zimring, in Atlanta is next. Mr. Zimring, being a specialist in civil rights lawsuits, is certainly very qualified to be here. We are pleased to have you—you may proceed.

Mr. ZIMRING. I appreciate the opportunity to be here, Chairman Edwards, and extend my appreciation to the other members of the panel and the two committees.

I am here in a representative capacity for the Association for Retarded Citizens of Georgia, of whom I have had the privilege of representing for the past several years. During the time which I practiced law I have also had the privilege litigating with and working with the many civil rights groups that exist in the State.

My clients have urged me and asked me to urge the passage of H.R. 700. They think it is essential to the maintenance of the handicapped rights movement and maintenance of the struggle for equal rights and equal access, and equal access to opportunity for the many handicapped citizens in the State of Georgia and nationwide.

They think that the passage of the bill is essential because it will permit the continuance of the handicapped movement which in its foundation and its very heart rests upon the citizen association and informal activities within Government that recognizes an obligation to provide nondiscriminatory treatment to the handicapped citizens.

We are very concerned that not only does *Grove City* undercut their eventual rights, but it severely emasculates the perceptions of those rights, and therefore, their ability outside the courtroom, their ability in the political and economic sector and governmental sector to enforce and create some constructive and affirmative activity on behalf of their citizens. That is the reason they urge the passage of H.R. 700.

Taking a look very briefly at the change of perception and coverage of the Civil Rights Act, basically the way changes have occurred for the mentally retarded and other handicapped groups, is through the help for the passage of section 504 of the Rehabilitation Act, which created a vehicle for the handicapped to suggest to Government there was a mandate that there was equal opportunity and equal access. By and large there had been some success in that area.

But I don't believe anybody would say that this portion of the civil rights movement, that is the portion that relates to handicapped citizens, has been completed, or even stabilized to the extent we could sit back and suggest that we have achieved a level of integration in our society of handicapped persons that is acceptable to us as a government and a society.

In making the changes for handicapped persons, we see there are four criteria. There has been historically a need that there be governmental laws to create a forum, to create an ultimate right.

The second has been a perception, necessary perception, that those laws effect Government and would require the changes occur within the Government.

The third, has to be a potential for enforcement of those laws or else the laws themselves are just a valid threat. And the fourth, we see is that in certain instances there has to be actual enforcement of the statutes themselves.

And we would suggest to you that the changes that have occurred for handicapped rights in the civil rights area, and for other minority groups, have occurred by and large outside the legislation, but have been made possible by the litigation and enforcement that has, in fact, occurred.

We see *Grove City* as potentially impairing or cutting out the ability to make changes within each four areas of those perceptions. There is a question from *Grove City* as to the extent of the coverage for the programs. And there could be the horrible anomaly that Government could pick and choose where they want to pinpoint their Federal funding. They could make economics about not putting funding in this program or in this aspect of the program, and could make those choices based upon concerns with the extent of the civil rights bills' coverage.

There certainly would be a general perception that would destroy the complement of informal and political changes which have occurred throughout the South during the last 10 to 15 years. It certainly would be a problem in potential for enforcement in our governmental agencies. And finally there would be a severe dimension in the actual enforcement activity which occurred.

By and large, we believe *Grove City* needs to restore the ability for my clients, the Association for Retarded Citizens and other handicapped groups to get back on the mainstream of moving forward toward affirmative political activity, with the ultimate ability of enforcing their rights, if that becomes necessary.

In summary, the association would like to emphasize one inherent problem of *Grove City*. At least as it extends to Government, Government-service Federal funds, with the perception understanding of what those funds would be.

In the South, in which we have had very reduced local funding for governmental programs outside of metropolitan areas, and certainly not local legislation such as the legislation the mayor has spoken about, that exists in the city of Atlanta. There is a perception that these Federal funds are a part of the program activities the schools have.

Under those perceptions they design what they fund and how to use their funds, with receipt of those moneys to create and anomaly where even though that perception and reality exists. That there may not be coverage for the discriminatory activities that partake other aspects of the program, I think, is going against reality. It certainly is going to be against the reality that existed before the *Grove City* decision. And we would urge you to pass H.R. 700 to correct those problems.

Thank you.

Mr. Edwards. Thank you very much, Mr. Zimring.

We note with pleasure you are a rival of the gentleman from Michigan, Mr. Conyers, a long-time member of the House Judiciary Committee, and an embattled, and also ardent supporter of civil rights.

The gentleman from Illinois, Mr. Hayes.

Mr. Hayes. I want to make a comment regarding Ms. Johnson.

Your statement is a very good statement; NAACP, is already on record through its chief executive officer, who appeared before our committee in Washington, and is supportive of H.R. 700. We are pleased.

Please permit me to caution you; passage is not going to be easy given what appears to be the trend of deescalation in the whole civil rights arena on the part of this administration.

Which brings me to the question I want to ask of you, Mr. Zimring.

In your statement, you indicate that the *Grove City* decision severely limits voluntary compliance. Is this a result of a change in attitude regarding the extent of enforcement? Could you comment in that area?

Mr. Zimring. My concerns are that it limits the perception of Government as to the coverage of the act. It undercuts the ability for my clients, as individuals, and a group, to go to a director of a school system, or to go to a director of a department or division of mental health, and say there is a right of access.

My concern is what will be that governmental official's first response to their concern? Will his response be—which is the response that they have received from the past—be, why is that a problem, why do you think you have been discriminated against? Which I think is the intent of the Civil Rights Act, and the intent of the earlier legislation.

Would his first response be: Do I have to rise to this complaint; because first I want to know if I can follow those funds down, my Federal funds down to this particular activity?

His first response would be one of: Do you even have a basis for jurisdiction, a basis for complaint within the problems? Rather than his first response being: Yes, I know that by the receipt of these Federal funds and by passage of this legislation that I should comply with the mandate for civil rights, and let me hear what your problem is, and let's see if we can resolve it.

It is a perceptual one, we think, that has the potential of closing the door on the vast amounts of informal compliance which has occurred.

Mr. HAYES. What do you think the enactment of H.R. 700 of 1985 will have on the enforcement of title IX and other effective law, do you think it goes beyond?

Mr. ZIMRING. In a technical nature I don't believe it goes beyond. Certainly, in this area where the Fifth Circuit and the First Circuit Court of Appeals exists, it clarifies a problem that existed in the prior case law as to what was the definition of programs. But I am more concerned with the push that it will give back to the Government, to volunteers, and to associations, to get back on the subject which would be discussed, which is how do we make our society fairer and more equal.

Right now, we have seen in *Grove City* simply one coming in a chain of things that have put a damper on that movement forward and have raised questions in that discussion. Questions that get to the heart of should we even be discussing these issues of equity.

So, I see the act as restoring the intent of the earlier legislation. Particularly clarifying some problems that existed in this portion of the Federal case law before the *Grove City* decision. But more particularly, allowing people to get back in and to push people back into discussing the issues of equity, which are essentially to the voluntary compliance that must exist.

Mr. HAYES. Thank you Mr. Chairman. I yield back the balance of my time, if any.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much. I have a question of both of our witnesses.

First, Ms. Johnson, there have been some people who claim to represent black and Hispanic groups, that have approached me to express the concern, if that bill is passed and private colleges and universities, that do not accept any direct Federal funds, are brought in under the coverage of this, should they take students on guaranteed student loans.

That that act, in and of itself, would deny access to a lot of blacks, Hispanics, women and other minorities, because the colleges would say simply, we don't want to comply with this law. If you are here under a guaranteed student loan, we simply can't take you because we don't want to get involved in all of this Federal rigmarole. That is not my term, that is a term that has been expressed to me.

If it is demonstrably shown that blacks, Hispanics, and other minorities, who have to rely more on Government funds, would be denied entrance to private education and would be forced into tax supported schools, what would be the position of the NAACP?

Ms. JOHNSON. Well, I am executive director of the chapter of the NAACP.

Mr. SENSENBRENNER. What would be your position?

Ms. JOHNSON. I cannot speak for the policy; the NAACP board makes policy, ratified by the convention of members. My personal feeling about it is that we didn't have—blacks were forced before the *Grove College* decision, blacks had been forced really into public State colleges and public colleges anyway, because they could not afford, a majority of them could not afford the expenses or tuition of a private college.

Colleges have been making, administratively making decisions anyway, so that they can keep black students out. So, my main concern right now is getting the teeth back into the title IV law and then working to get stronger enforcement, including legislation that would do away with, not allow, would not permit private colleges to actually call it a scheme.

Mr. SENSENBRENNER. Take away the tax exemption, for example.

Ms. JOHNSON. That could be one. There are a number of measures or things that could be done.

Mr. SENSENBRENNER. Thank you.

My question to Mr. Zimring. I would like to preface my making two statements.

First of all, I was asked by the administration as ranking Republican member on the subcommittee, to cosponsor the Dole bill in the House, and I refused that request simply because I think that even though the *Grove City* case only applied to title IX, similar legislation on the other three statutes, including section 504 and the age discrimination act amended, would have the same result if it reached the Supreme Court.

So, if we are in the process of restoring the civil rights law in title IX, we might as well do a complete job with all four of the statutes, and the Dole bill fails to do that.

However, politics is the art of the impossible, and unless we can get a bill passed and signed by the President, we are left with the mere interpretation of the law that the court made in *Grove City,* and I think that that is unacceptable to all of the members here present today.

The concern that I have is the people who did the drafting at the instruction of Mr. Edwards, Mr. Hawkins, and others, did not get the message loud and clear that the bill was suppose to be restorative. And there is a considerable amount of suspicion involved as a result of what happened last year, where Senator Hatch very effectively used last year's bill as stating that the ma and pa grocery store that accepted food stamps had to put in a ramp for handicapped accessibility.

Now, in your legal opinion, do you think that the difference in breadth of coverage between the public sector and private sector merely restores the law to what it used to be before the *Grove City* decision or not?

Mr. ZIMRING. I am going to answer that in a not very lawyer-like yes or no type answer.

In this circuit part of the world, we had a case that was from the Fifth Circuit Court of Appeals, called *Brown* v. *Sibley*, that said these acts, title IV, 504, the funding needed to be in the program or activity that was serving that assistance.

In the legal community the meaning of that was not very clear, and there were differing results and opinions upon how deeply those funds actually had to be traced. Was the fund to the elementary or secondary education, LEA for instance, sufficient, for all of its activities? That was unresolved.

So, when I said in my initial comments I felt it would clarify the statute, it does clarify the statute. You certainly could get an argument that the language in the statute may, in fact, stand the meaning of the law. But my personal opinion is that it does not.

My personal opinion, if you take a local education agency, and say to them they receive, as many of our rural districts do, $100,000 under chapter 1 and $50,000 or $60,000 or $70,000 under Public Law 94-142, the Education for Handicapped Children Act, and a few thousand under the Vocational Education Act, and that they use those funds to design their services.

It seems to me the perception that existed at their level was, in fact, that they have to meet general compliance on a systemwide basis. And so I don't see it as an expansion of that.

Mr. **Sensenbrenner**. Well, there have been allegations that have been presented to the subcommittee that any other entity clause that appears as an amendment to each of the four statutes, would expand the coverage to independent contractors and franchisees and the private sector. So for example, if one Hardware Hank's store got an SBA loan to construct the store, every other franchisee of Hardware Hank's would be covered whether or not they received Federal funds? Do you think that that is a proper interpretation of the any other clause that appears in this bill four times?

Mr. **Zimring**. My personal interpretation would be that it probably would not. But certainly Congress could determine to extend it that way. In the handicap area that is simply not a problem, that is a red flag, that is a suggestion by opponents of the bill that offer things in sectors that don't exist. The ramp to the mom and pop grocery store probably should exist.

If we, as forthright men and women, sat down, would think about it, we would say someone in a wheelchair should be able to get into the corner grocery store, that is what we want in our society. But the septer that this bill would create an obligation to do that, simply is not true.

In the 504 areas you are all aware are the tests, one is the accomodation, of reasonable accomodation, and test of reasonable accomodation. In fact, in the courts, unfortunately, it has resulted to economic feasibilities. We see that throughout the heart of the 504 litigation.

It seems to me the extension if the entity language does mean mom and pop grocery store, the ramp. The requirement that that mom and pop grocery store build a ramp, is not a remedy available to handicapped people.

Mr. **Sensenbrenner**. Let's assume, for the sake of argument, that these allegations are true and end up being determined to be so by a court, you have independent contractors and franchisees who don't receive any kind of Federal payments, and it is the Federal payment that is the nexus of the extension of Federal power under this bill. Everybody agrees to that. Mayor Young said so earlier this morning. If you have one of these entities that is covered by extension that doesn't receive funds, what is the penalty there, you can't cut off funds that they aren't getting in case there is a violation.

Mr. ZIMRING. The penalty goes back to the Government entity. In the South, and in many places in the country, let me use an example, we provide Public Law 94-142, it allows government, local boards to contract to provide services with other persons.

Mr. SENSENBRENNER. Let's use the Hardware Hank, for example. You have franchisee A, that gets a small business administration loan to build a Hardware Hanks store, you have got franchisee B, that might even be in another section of the country, they pay for the franchise, they get all the advertising and things like that, but they don't have any SBA money. If the argument is true, that franchisee A, getting an SBA loan brings all of the franchisees of Hardware Hanks under the act, what do you do if franchisee B violates the law but doesn't get any Federal money? Injunctive relief, private acts?

Mr. ZIMRING. Well, the first remedy is to go back up the chain and terminate, or force the termination of the linkage that was the discriminating franchisee. And the Government—because the key and the important key to nondiscrimination in our society is that the Government take a step forward.

Mr. SENSENBRENNER. If you cut off the Federal funds to franchisee A, that is in 100 percent compliance, you are penalizing someone who hasn't commited a sin for the sins of others.

Mr. ZIMRING. Yes; my suggestion would be that you go back up the chain to the link, and you simply urge and force a determination of those contractual and other relationships from the source of Federal funds with the particular offending entitity.

I think the courts and the administrative agencies are sufficiently versed in the issue to be able to do that. So you force government not to have activities with people who actually discriminate and they can pick and choose those.

Mr. SENSENBRENNER. My time is up, but I think the point that has got to be made is that this bill is rather sloppily drafted in that there is no clear answer to these questions, and the reason we are here today is because the drafters of the previous law sloppily drafted the bill so that the Supreme Court ended up narrowing the intent far more restrictive than what Congress intended.

Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. I am delighted to join our subcommittee here. I am sorry I missed the testimony of the witness.

I would like to start off with only three questions, actually two. I would like to ask the president of the NAACP chapter here, Mrs. Johnson, just a kind of a climate question, because I don't get down here as much as I would like.

What is the extent of the civil rights struggle going on here in the city and the State over the last several years? In other words do you perceive yourself to be moving forward and improving or do you experience a retrenchment and diminution of the ability to enforce civil rights laws? Do you believe civil rights laws and court decisions themselves are getting weaker or more difficult to enforce?

Could you just tell me what you think has been happening and how that is perceived by you and your membership here?

Ms. JOHNSON. Yes; I will be happy to. For a number of years, until about 5 years ago, we were making rapid progress in this city and the State. We had almost, from the private sector, we go to negotiate complaints of discrimination, we had almost 100 percent cooperation, but now in the last 5 years, particularly in the last year or so, since this *Grove City, Grove College* decision, we have had a difficult time.

We cannot get any concessions, considerations through negotiations around the table with the private sector and the government itself. The city government and county government, they are doing an excellent job, we are making progress there, but the State, we are having problems there because we have no laws with teeth in them and they know it and we are retrogressing.

For instance, in about 5 or 6 years, I would say 6 years, we had at least two department heads in the highway patrol division. Today we have none. I can just go on and on and on that way. In the private sector, whenever they have to reduce the force, the first people to be let go in that reduction in force are black people, and we just see a general retrenchment.

We have nowhere to go to get help for enforcing the laws that are on the books and those that are not, and lot of them are weakened and I would like to really see you gentlemen lead, you are doing a wonderful job, but we would like to have some stronger laws and especially in the area of enforcement.

Mr. CONYERS. Well, you know that is a similar impression that the executive secretary of the NAACP, Dr. Benjamin Hooks, commented on only last week when he testified before this same subcommittee on this same subject. I am in the process of detailing that because you know you can stay in Washington so long that you lose track of what is going on around the country.

So, anything that you hear about that, or anything that goes to this question that I have raised with you, I would invite you to send me any specific examples.

Ms. JOHNSON. I would like to document a number of those, a book for you.

Mr. CONYERS. Well, thank you very much.

Attorney Zimring, I want to ask you a similar question but I want it directed to your field of specialization and experience, that is in education and in dealing with people who are handicapped.

What experience have you found in any change in the enforcement and the law and the court decision area over the past several years, if you have indeed found it at all?

Mr. ZIMRING. My personal experience and the experience of the voluntary members of the Association for Retarded Citizens is the same, and that is there has been a change in the energies of government to correct problems of access, problems of segregation that relate to handicapped persons and there has been a change in the desire to informally correct those instances.

In the civil rights area, the South has gone through a process as it relates to education, of desegregating their school systems, and that has been by and large successful.

What we have left in the South, as far as race discrimination is concerned, are a series of second and third generational problems that exist. Those problems range from segregation within classrooms themselves, the use of testing instruments that are difficult and unfair for minority groups, the whole range of thinking that on their face do not lend themselves to two things:

One of perception that they come out historically as adequate in our system and the perception that those types of problems can be informally changed through voluntary advocacy.

In the handicapped area my clients have seen a normal reticence in the Office of Civil Rights to take a complaint to abide by the Adams order and investigate it in a timely fashion, to issue a letter of finding and to remedy a problem, and they have seen that change and that slippage over the past 2 or 3 years.

They have seen this accelerate in the last year and their informal mechanism, their mechanism when they go in and speak to a governmental official, let's work this problem out before we file a complaint, let's work this problem out before we file the lawsuit, that government official understanding that there will be enforcement or legal action down the road may just, if they don't work together and create a sense of equality, that has been terribly injured and the ability to change to a place in society outside of the courts and outside the HSS and outside of the Department of Education hearing procedures, has been hurt substantially.

I think government understands that there is no enforcement and there has been slippage and the problem is not what should occur, the problem is not equality, the problem is in the perception of what would happen if equality is found not to exist. So we would urge the passage of the bill to assist in getting the movement, civil rights movement back on track, to discuss the issue of equality and not to discuss the issues of jurisdiction.

Mr. CONYERS. Thank you.

Thank you, Mrs. Johnson.

I have another question but we may not have time for it.

Mr. EDWARDS. Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman.

Mrs. Johnson, you indicated in your statement on page 6 that we need to enlarge, not limit, the effective tools for barring racial discrimination. I generally agree with that particular statement, but in reference to the bill in front of us, is it the interpretation of yourself and others in the Atlanta chapter that H.R. 700 does expand jurisdiction?

Ms. JOHNSON. We feel that it will get, as Mr. Zimring said, get the civil rights movement back on track. It will also put teeth back in the title VI. We feel that it was needed to overturn or to correct what the decision in the college decision that was made, *Grove City College* decision, that is what we feel about it.

We don't feel that it expands the civil rights laws. I think we need to really expand, it needs expansion, but we don't feel that this particular bill, H.R. 700, expands it; it just takes us back where we were before.

Mr. GUNDERSON. Thank you.

Mr. Zimring, as an advocate for equal and civil rights, if Coca-Cola received funding under the business industry partnership of the Vocational Education Act, or received funding under the Job Training Partnership Act, would it be your interpretation that they would come under the coverage of H.R. 700?

Mr. ZIMRING. The way I read it, it would be yes, and I don't have a problem with that. We do not have a problem with saying Coca-Cola should be covered by title VII of the Civil Rights Act and that they should not be permitted to discriminate in the employment of the people they receive, irrespective of the amount of Federal funds they receive. That is a clear understanding that has existed that any private industry with more than 15 employees are protected and the employees are protected, an entity and corporation are covered by our civil rights legislation related to employment.

So I don't have a problem to say to Coca-Cola that if they receive Federal funds that are not in their employment, which is already recovered, but in their provision, their activity in our society in the marketplace, that they are held to a test of equity, I just think that is a legitimate decision this society and Congress on behalf of the society has made in the past and could reaffirm with this legislation.

I do not see it as creating a burden upon them, and there are other corporate trends to adhere to and obligations of access and nondiscrimination. It is simply a decision that Congress, I think Congress has made and society has made and should reaffirm with this bill.

Mr. GUNDERSON. In the definition of program activities or any other entity, how far down the chain within Coca-Cola's distribution would you take coverage? I asked the mayor the question whether or not it ought to affect the distributor or even affect the local store which is selling a particular product; how far down do you believe that this legislation either does or ought to carry the enforcement standard?

Mr. ZIMRING. I would carry it to the mom and pop grocery store because the question the bill deals with is with jurisdiction, is the scope of coverage. The bill does not deal with the remedy and for the handicapped people, in the 504 area, the remedy is probably out of case law, a balancing test of what is feasible, what is reasonable, based upon facts and situations the equities of the situation.

So from my perception what we are talking about is are we going to say these entities are in fact part of our society and covered by civil rights laws. The burden of proof that would supposedly exist for meeting those concerns is a separate question.

It is a question of remedy, a question of relief, a question over what can that grocery store do to make itself physically accessible, and it seems to me that the criticism of burdening the contractors down the chain is not one that relates to H.R. 700, it is one that relates to the questions of the power that already exists, tests that exist within the remedial aspects of the bill.

What we are talking about and what the committee and Congress is talking about in H.R. 700 is to how many will these pertain? I would track them down to the ultimate level because I think one way that we need to regulate is not only the entity itself but with those that contract with those they have political power over, those that have economic power, they need to take steps to enforce.

Mr. **Gunderson**. I am not disagreeing with you. My intent here is to try to clarify the language exactly in terms of what the implication of the legislation is or should be. You are saying that if Coca-Cola, the national or international company, receives either funds for handicapped employment or job training partnership, that by virtue of this legislation, mom and pop of the corner 7-Eleven is covered. Under the remedies in H.R. 700, the Government should therefore have the ability either to cut off funding for Coca-Cola and all of their job training programs, or they ought to have the opportunity to issue a private suit against this particular store for not having the handicapped access, et cetera. Is that correct?

Mr. **Zimring**. You are correct. I answered the question which would I prefer, and I certainly would prefer the way that you suggested, because I think it is important to the civil rights movement and handicapped movement. Whether or not the language of any entity extends to a third person or removed franchisee, it would be my personal opinion that it can be interpreted that way. It doesn't have to be interpreted that way.

Mr. **Gunderson**. Thank you.

Mr. **Zimring**. I simply, it is beyond the scope of what this committee is intending with that language to mean, the committee certainly structures that language through its legislative history based upon its deliberations in the public proceedings to say yes it does or no it doesn't. Whether or not that would be appropriate with the earlier statute or not is a question that people will disagree on, but this committee can choose, based upon public sentiment, to say what entity means and should mean.

Mr. **Gunderson**. Thank you.

Mr. **Edwards**. Mr. Conyers.

Mr. **Conyers**. Mr. Chairman, if I may again have time for just a continuation of this discussion, I want to commend counsel who has described, out of our tradition and the history of enforcement, precisely what happens. We have been here before, we had similar legislation last year that did pass the House, and I may say that it was bipartisan and enjoyed support in both branches of the Federal legislature.

But, as you look and continue to look at the language in this bill, which I suppose could be confusing to some, but an independent contractor can by no stretch of the imagination be caught with section 908 directly. Let's take the Hardware Hank example, which I think is a very good one. It could not be caught in the second section, department or State of the local government, it couldn't be the State or local government that distributes assistance nor could it be in the university or system of higher education, here is where you have to read a little bit.

Mr. **Sensenbrenner**. Would you yield?

Mr. CONYERS. Just a moment. A corporation, partnership, private organization, or sub-four, any other entity determined in a manner consistent with the coverage provided with respect.

This has been gone over rather carefully, that is why I want to pose myself as one of the advocates of the way this was worded. OK, what we are describing here is within the corporate structure thus it does not include an independent contractor.

Mr. SENSENBRENNER. Would you yield?

Mr. CONYERS. I am going to yield in 1 second; I will give you the whole hearing.

The final point about it is that a franchisee is an independent contractor. So there is no way any legal reading of this could take franchisee B and have his discrimination imputed to Hardware Hank.

Only Hardware Hank discriminating or violating the civil law somewhere in its corporate organization would be any violation. That is pre-*Grove*. It is in the law. It was a practice of the Department of Justice enforcement since the beginning of time. There is nothing that suggests H.R. 709 is any different. It is just a matter of understanding how legislative language is drafted.

I bring this back to your attention, because I think this is going to be a point that we are going to be dancing around for quite a while.

Do you have any comment to that?

Mr. SENSENBRENNER. Would you yield?

Mr. CONYERS. Wait a minute.

Mr. EDWARDS. I am sure the gentleman will yield to the gentleman from Wisconsin. I want to point out we do have five more witnesses this morning.

Mr. SENSENBRENNER. I will be very brief.

One of the things that confuses those of us who have not cosponsored this bill is the debate between the sponsors of the bill on how extensive the coverage would be. My friend from Michigan, Mr. Conyers, has just stated that an independent contractor would not be covered. However, last Thursday, when New York Congressman Hamilton Fish, himself a cosponsor of the bill, testified before the committee, he said an independent contractor would be covered.

Perhaps the rest of us can be enlightened as to exactly what the intent of the authors is.

Mr. CONYERS. I would be happy to clear that up because I don't want Hamilton Fish to be misquoted.

An independent contractor can be caught under this title if that franchisee or independent contractor is also the recipient of, say, job training programs or some Federal benefit that would make him, or that particular independent agency, caught by themselves. But it wouldn't be caught because it was doing business with Hardware Hank and one of the 500 franchisees decided to violate the Civil Rights Act.

Mr. EDWARDS. Thank you very much. You have been splendid witnesses and very helpful.

We will continue the testimony this morning with a panel of very fine witnesses. The first witness will be Dr. Joseph Pettit, who is president of the Georgia Institute of Technology, in Atlanta. We are delighted to have you here, Dr. Pettit.

We will take all of the testimony and then we will have a series of questions and all testimony will be made part of the record.

Dr. Pettit, you are welcome and you may proceed.

STATEMENT OF JOSEPH PETTIT, PRESIDENT, GEORGIA INSTITUTE OF TECHNOLOGY, ATLANTA, GA

Mr. PETTIT. Thank you very much.

Mr. EDWARDS. Incidentally, Dr. Pettit spent many years in the area that I represent, Palo Alto, Stanford University. Nice to have you here and to meet you again.

Mr. PETTIT. Thank you, Congressman Edwards, it is nice to renew our acquaintance. I have been out of your territory for 13 years now at Georgia Tech as president.

I received somewhat short notice on the opportunity to be with you and do not have written testimony in advance, but let's regard this as an introduction and call upon me again later if I can be of any help.

The legislation that you are considering, of course, is in an important area, and it is hard to be against civil rights and indeed we at Georgia Tech are at the opposite end of the panel of range of concern, we are in a different time action phase and to illustrate it let me say that until a few decades ago we were by law all male, all white, and representing some limited range of professional fields, and still do, engineering, architecture, science, and management, which have not been attractive in normal fields for women and minorities to go into.

I personally have been part of the national effort to increase the representation of minorities and women in the field of engineering, which is my own professional field.

At Georgia Tech, when I came here 13 years ago, we had about 200 women students, and now we have 2,300. We had about 60 black students and now we have nearly 700. So we have had a tenfold increase over the 10 years.

I guess I would hope that in your addressing this legislation post-*Grove City College* you should not consider this a going back because the olden days weren't as good as some think. We don't like to lose ground. On the other hand, I would hope that you would view this as an opportunity to move forward and do things even better.

I guess I would like to speak not to the details of the wording of the legislation, you can handle that, I would like to speak from my experience as an educational administrator and a member of a couple of corporate boards, one in your district and one here.

To heighten your concern for what happens after the legislation, the interpretation and the enforcement in the executive branch, because, I think, while you are in the legislative side and somebody else on the executive side, still you have certain objectives and certain broad philosophic concerns and one would hope that they would follow through.

I think your bill has the particular broad responsibility because you are not dealing only with higher education, that is what I want to speak to, but you are covering several other subcultures in the national life. Each one of us would claim that his subculture was different from all the others, that I have heard that all of my career from department heads and deans, how their field is different higher education, is a peculiar kind of subculture and important, but it has its own ways of dealing with things and its own results and there is no question however that we are not subject to external auditing, we are governed as most universities are by lay boards, but what you are looking for is fairness, appropriate rights for minorities and women in the outcome.

But the remedies have to be somewhat tailored. I don't think you are in the business or intending to change the way higher education institutions grow and mature and receive women and minorities, and it has been my experience—I was at Stanford for 25 years when it was growing from a modest regional institution up to one of supreme eminence.

We are on the same kind of growth curve now. We are trying to provide higher quality education for students who enroll there and more importantly let me mention this for your consideration.

We are also in partnership with the Federal Government. We are not taking money from them in the field of sponsored research which addressed quite specifically and emphatically, but in the legislation of the late 1940's and early 1950's it was recognized that the people in higher education at the university were a national resource. The great work done during Word War II in the Manhattan project, proximity fuses and many things revealed these things that went back to the university were there and should be sponsored in their work in developing because it is and was a national resource.

So we are not just charitable recipients of charitable grants but we are trying to do something for the greatness of the Nation and we do in this particular way.

Let me just give you two or three anecdotes to illustrate the problems that result in the interpretation and the enforcement. Perhaps I should start with athletics, perhaps even basketball since yesterday was a big day here.

It illustrates the extreme big time sports can go to at a campus like ours that has no great aspirations to be a superpower in all fields of endeavors. We have had great difficulty with HEW with earlier Secretaries before whom I have testified, in the concept of title IX and its application to women's athletics, and we just couldn't find anybody qualified to talk to to explain all the world was divided into two parts, men's sports and women's sports.

I have to say that there are revenue sports, the big sports, if you will, and then all the other sports that we want to have and some profusion to provide opportunity for intercollegiate participation by all students, including women.

The application of the law was that you were to take the per capita expenditure for all men's sports, per capita expenditure for all women's sports, and make those two equal in a sport by sport basis, was to be equal. So we have football and basketball. Those are our two big revenue sports and we go all out, all out, lots of money on recruiting, lots of money on scholarships, and with that they pay their own way, indeed they help to generate some of the money for the nonrevenue sports, both men's and women's.

On the women's side, we have had a basketball team, still do, intercollegiate. Some young women came into my office one day and said, we would like to have a varsity team in basketball, we played basketball in high school, came here as students, so that was fine we gave them varsity status, they played immodestly and had a wonderful team, and we are in a mode where we are having to spend the same amount of money recruiting, same amount of money on full-time coaches, and we converted women's basketball into a major intercollegiate sport, with the result that we are recruiting women basketball players and hope they will be interested in studying our subjects, the women who were students no longer have a chance to play, moreover, it has put a freeze on our development of the sports program because we have to maintain this equity.

You didn't write that into title XI, and I am not blaming the present company, this was trouble clear at the top of HEW.

I would hope that you would have legislation that would or at least some kind of followup that would make this job easy.

Let me give you another example that illustrates the strange culture of universities. This occurred more than a decade ago. Two women in one of our academic departments were not granted tenure; they filed a grievance with OCR, on the basis that a man had been given tenure a few years earlier and they felt their cause was as good as his.

The practice is in promotions and tenure that we have a faculty committee at the department level and department head. The faculty committee at the dean's level and dean faculty committee and vice president for academic affairs is a very elaborate process, and these things are all subjective, but we feel that quality is addressed.

The outcome of that particular controversy was not that I should go and find two women who were better qualified to teach our students than these particular women, but rather we must keep these particular women and grant them tenure, and we did.

I feel there was a lack of understanding over our procedures, a lack of option tenure is not a matter of reward for somebody who is good, but a matter of selecting which people are good that you want to keep in the permanent party and you may have someone on nontenure basis then decided not to keep them and go and search for someone better. We were never able to convey that.

The third case was when we had a professor of Hispanic origin who came to this country in the early 1950's, when there was a tremendous enrollment bulge because of returning World War II veterans, and people were hired right and left to help teach those classes.

He stayed on; he did acquire tenure in the process of longevity. I guess at the time of rising standards of the institution, he would not have been hired in the first place and would not have been given tenure.

I am sure you know from your own experience that everyone on campus knows who is the best two or three professors and everyone knows who are the worst, and there is a big middle. He was clearly acknowledged to be down at the bottom. Probably in his college, the worst of the professors, not surprisingly, he had the lowest value.

However, there was no fault found with that department. There was a calculation made that showed that his salary was too low, about $3,000. This was made by outside enforcement people. So in the end we settled that by giving him the $3,000 and in the end negotiating an early retirement for him on fairly attractive terms.

Well, I won't stretch this out. These are not intended to be horror stories, but merely illustrative that if you are to accomplish the good in organizations that are trying to do things well, then I hope you will help to cooperate in achieving those ends and still preserve the integrity of the particular kind of institution.

One final point: I have no sympathy with the *Grove City* case, I think the case can be made, and we use it to make it at Stanford, Congressman Edwards, that California State scholarships or $600 or $800 that enable someone to come to Stanford were of no help to the institution, they only helped the student, because every student was subsidized and every student in my place is subsidized, so I think maybe if scholarship help of this kind were given to individual students you might dodge that whole issue.

You can say on the other side, well, it relieves the burden, the financial aid aspect, but I have to say this. Instead Georgia financial aid comes from private money, not from State money, because we are not allowed to give away State money for scholarships except in one or two specially selected cases.

But, on the other hand, I have some trouble with collective agreements. I have some trouble with my institution working very hard and being more successful than most of the three institutions in the State system, when the massive artillery of the Federal power seeks to cut off everything we are doing, including $22 million of Defense Department research and development because other institutions in the State system are deficient.

It is a problem, it is a potential problem. But the threat is there and you intend to use it and I think you have to use the power you do have to effect changes. I will stop with that and respond later to your questions.

Mr. EDWARDS. Thank you. That was a very candid and useful testimony.

Our next witness is Dr. Elias Blake, president, Clark College, Atlanta, GA.

STATEMENT OF ELIAS BLAKE, PRESIDENT, CLARK COLLEGE, ATLANTA, GA

Mr. BLAKE. Thank you, Mr. Chairman.

In addition to being president of Clark College, I have for a number of years been involved in some of the major efforts dealing with desegregation in higher education in the South, called the *Adams* case and particularly in the South as well as some of the other cases.

I also serve as chairman of the Selective and Public Policy Committee of the National Association for Equal Opportunity, the Association of Historically Black Colleges, in which we look at these kinds of issues.

So I have been following for many reasons rather closely the ebb and flow, the impact of the civil rights legislation, and the desegregation suits on higher education in this region, particularly also in the Nation.

I wanted to make two, I think general points, and then not dealing with the business of the legislation but what I perceive as very important and why legislation of this sort is needed and the potential impact of the *Grove City* decision, I feel, must be kinder action, and a compelling need to do so.

If one looks at the progress of blacks in higher education, as reflected in Doctor Pettit's comments, in 1964, there were less than 300,000 blacks in college in America. In 1980, there were about 1.1 million blacks in college. But there were some troubling things which have begun to occur in this for about a decade.

It is not very well known, and people are surprised when you say that in the national pattern of black enrollment in higher education there has not been a great deal of continued progress since the mid 1970's; and data that we have developed has supported this.

In graduate and professional schools, for example, law school, medical schools, arts and science, for Ph.D.'s, we had a tremendous increase between 1968 and 1975. Since 1975, the progress that was made at that time has remained at about that level and has not expanded very much since that time.

Even in terms of the national enrollment data on undergraduates, in higher education in the country, those figures stopped at about 10 percent of the total over 5 years ago. The target was about 13 to 14 percent because blacks are younger and they represent equity, a larger proportion of the college-going population.

But not only did those figures stop going up about 5 years ago, but in the last 2 years we have seen both the absolute number of blacks enrolled in college the percentage dropped slightly. So what we have seen basically over the last 10 years is a kind of stalling, that the early progress was not continued.

There are two major reasons for that which I will cite in order to make my point about the importance of this legislation.

One reason for the stalling is that as the moneys which were important in supporting blacks in getting a college education expanded, the pool of people who were eligible to compete for funds also expanded, so that in my own institution and others of that kind, we have seen over the years an increasing amount of difficulty in our families in paying for the education of their children, supplement the availability of these funds.

Of course, in the last 4 years, there has been no continued expansion at all, the costs having gone up. So we have a situation now where the financial investments continue to increase.

The second factor that I think is important in this stalling in higher education, is my own personal view there has been a weaking of the clear mandate to those who were pushing hard to expand opportunities, and the other side there have been a strengthening of those who professed, on the one hand, to be for the goals of equality, but claimed they were troubled by the methods used to achieve equality.

Then we had coming into that atmosphere, the ambiguities of the Supreme Court decision in *Bakke,* which was specifically for higher education. And a deeply divided Court, I think, gave everybody some interpretation that they could use in terms of whether one should charge ahead full steam, or whether one should slow down because of things that had been changing.

Because of both of these findings, I think what we need now is a clear reaffirmation that nothing has changed in the Nation's recent commitment to enforcment of laws against racial and sectional discrimination. I feel that the Civil Rights Restoration Act can make that clear. It can serve notice that those who are found or allowed any form of discrimination to occur can be subject to broad and pervasive remedies.

In my reading of the discrimination in the society, it was important for men of good will, who wanted to see something change, to be able to say to the doubters, that this is something we must do, and we must do it now, because it is demanded of us that we do it and that we get these changes on.

When there is a lack of clarity and confusion and arguments about this and that and the other, even those people who want to do a job, and who want to push very hard, find themselves in a very difficult situation. I say that because in this region, as well as in other parts of the country, the business of getting more blacks on the faculties of institutions, getting more students in, and all of these things are still on the cutting edge of social change.

All of these things started really in earnest a little over 10 years ago. So we are not a long time in this and people are still learning, finding their way, figuring out what is the best way to expand the equality of opportunity to get people in the system.

As I read the arguments that have now begun to ensue as a result of the *Grove City* situation, and the arguments that float around the particular restoration act, it says to me that it is extremely important that this piece of legislation pass.

It is important to those of us who feel that there has been and eroding of this kind of strong, forceful commitment to the enforcement of civil rights laws. It is also important to those people who are out there on the firing line, who can be cut up rather badly, by those who either counsel caution or who can say you are going beyond what you are required to do.

I would then argue that this legislation should, if anything, err on the side of the broadest possible reading and broadest possible remedies, because if the perceived remedies are not broad and are not persuasive, then I think it is going to create less vigilance and less attention to asking the fundamenal questions about whether the way in which people organize, hire, the way in which people organize to recruit, bring students in, that these ways will not be subjected to as much scrutiny by people, all kinds of institutions.

But if this legislation passes, even if we never get to the point where some Federal agency may be abusing some persuasive powers of regulation, everyone would remain on and know that nothing has changed. There is still a very strong national commitment, and the Congress has spoken from the point of national leadership that we are not going to allow any erosion to take place. We want the agencies of Government to fashion the broadest possible remedies, so that we can continue to get the kind of social change that we need in the society.

I thank you for listening to my views and I will be open for questions.

[Prepared statement of Elias Blake follows:]

PREPARED STATEMENT OF ELIAS BLAKE, JR., PRESIDENT, CLARK COLLEGE, ATLANTA, GA

I am Elias Blake, Jr., President of Clark College here in Atlanta, Georgia. For a number of years, I have been involved in the issues surrounding the desegregation of systems of segregation in education, having served as an expert witness in such cases as Hobson v. Hansen in the District of Columbia Public Schools some 20 years ago and more recently in the Geier vs. Blanton case in Tennessee, which resulted in the merger of two institutions of higher education with the remainder institution being the historically black institution which was being undercut by the rise of a more recent institution.

I have also served as a principal researcher for the historically black colleges' Amicus brief in the Adams v. Richardson (now Bennett) case, desegregating formerly racially divided state systems of higher education in the South.

I have served as Chairman of the National Advisory Committee on Black Higher Education and Black Colleges and Universities of the Department of Education and am now Vice Chairman of the National Association of Equal Opportunity in Higher Education (NAFEO) and chair their Committee on Legislation and Public Policy.

From my perspective of having watched closely the impact of federal law on the advancement of black Americans in general and in education in particular, the need to clarify the potential negative impact of the Grove City decision is compelling, urgent and in our deepest national interest.

A few comments on the background context to my views are in order.

A very short 15 years ago saw a combination of voluntary efforts, the pressures of federal law and new sources of federal financial aid dramatically expanded the higher education opportunities for black Americans. In 1964, less than 300,000 blacks were in college; by 1980, 1.1 million blacks were enrolled in college.

These dramatic advances, however, stalled in the mid 1970's. Since about 1975, enrollment in law schools and medical schools as well as graduates has remained at the same levels with some declines in the early 1980's. Undergraduate enrollment was at a little over 10% of the total against a target of 13%; now it has droped back to just under 10% with the numbers now just below a million.

Racial progress in higher education has been stalled for almost a decade and still remains fragile as it is so heavily dependent on continued pressures to break patterns of the past.

Two major forces have, in my view, been responsible for this stagnant situation in higher education that is now approaching a decade.

(1) The lack of the continued expansion of public and private sources of funding for aid to go to college for those who could not afford to go to college. The expansion of funding carried an expansion of those eligible for funding. The weakness of the economy and its impact on public funding was and is a contributing factor.

(2) The weakening of a clear mandate to those who were pushing hard to expand opportunities and the strengthening of those who professed to be for the goals of equality but troubled by the methods used to achieve equality. The ambiguities of the Bakke case narrowly decided by a divided Supreme Court plus the rise of an articulate and tenacious cadre of critics of affirmative action as having become reverse discrimination and unconstitutional racial classifications have intensified the uncertainty.

Most of all, we need now a clear reaffirmation that nothing has changed in the nation's recent commitment to and enforcement of laws against racial and sexual discrimination. The Civil Rights Restoration Act can make that clear. It can serve notice that those who are found to have allowed any form of discrimination to occur can be subjected to broad and pervasive remedies.

In the history of desegregation in the South, it was important for men of goodwill to be able to say that changes had to be made and that they had to commence now. A significant sense of clarity is needed for even committed leadership that is still very much on the cutting edge of increasing the numbers of black students, faculty, administrators and other employees in institutions of higher education.

The Grove City decision has raised enough nettlesome issues about how broadly one can enforce remedies for findings of discrimination.

No possibility must be left that discrimination may be permissible in any part of an institution of higher education that receives any federal funds either directly or indirectly through its students. No possibility must be left that by refusing direct federal grants to the institution but by accepting the benefits of grants to students one is exempt from complying with civil rights acts or from penalties for noncompliance.

My reading of the legal arguments about the narrowness or broadness of congressional intent gives great urgency to language which says, however, it is fashioned: "We intend for the whole to have to suffer for the actions of any of its parts and we intend for the risks to be great as to potential remedy."

Without the Restoration Act, too many may be undercut by those who would counsel caution or delay until the legal situation is clear. Further, in many of the largest, most prestigious and influential institutions of higher education, the largest sources of federal funds could be untouched by some interpretations of Grove I have seen. Only financial aid programs would be cut off leaving larger sources of federal funds untouched.

The world is a much more subtle place in which to establish racial discrimination and arguments which narrow remedies for adjudged discrimination could lead to less vigilance due to minor perceived penalities.

My most important point, however, is that given the fragile and recent nature of progress in higher education, we need all the positive signals we can get that there is a national commitment to press for the advancing of blacks.

There is a sense that we are on the defensive in regards to the commitments in our nation that made the three-fold increase in blacks in college possible.

There is a sense that those who argue that broad remedies that acknowledge historic patterns of discrimination must yield to individual remedies fashioned one by one on the basis not only of discriminatory effects but also on the basis of intent to discriminate are winning.

In higher education specifically, we can illl afford to have the Congress fail, for whatever reasons, to send a message that there is still a clear national commitment to equality of opportunity and that it is willing and able to make that clear.

The new debate on the methods of and extent of enforcement of badly needed Civil Rights Laws to redress historic grievances must be put on a sounder and more forceful footing. With the strong and overwhelming passage of S431 and HR700, we will have moved to do that and do that well.

I thank you for listening to my views, and I am wiling to answer any questions you may wish to ask.

Mr. **Edwards**. Thank you for your very, very good testimony.

The third member of the panel to testify is Reece Yandle. Mr. Yandle is executive director of the South Carolina Association of Christian Schools, from Charleston, SC.

Mr. Yandle, you are welcome.

STATEMENT OF REECE YANDLE

Mr. **Yandle**. Thank you, Mr. Chairman, members of the committee. We have in our State an organization of some 25 schools and approximately 10,000 students and faculty members. I also speak for some 250 churches in our State, and in addition our church operates, our association operates as an affiliate of the American Association of Christian Schools which has approximately 1,300 schools across this country.

We are all greatly concerned that our religious freedoms are being severely threatened. I might also add that although I speak primarily for the religious communities, if the principle that aid to students triggers Federal controls for the entire institution becomes firmly established, it could very well mean the end of private education as it is known in this country.

The passage of House bill H.R. 700, the Anti-Grove City College bill, would represent the greatest governmental intrusion into church, personal, and private affairs in modern times. The provisions of this legislation would foster a means of total State control over the affairs of church schools and, ultimately, over the affairs of the churches themselves, because the churches and their schools are inseparable entities.

The Constitution of our country states flatly that "Congress shall make no laws respecting an establishment of religion or prohibiting the free exercise thereof."

Legal scholars agree that the pivotal word in that first amendment statement is respecting. Respecting is synonymous with regarding and concerning. Prof. Robert Cord, the author of the 1982 book on the first amendment, concludes that it "prohibits Congress from making laws about, concerning, or regarding, an establishment of religion." H.R. 700 would violate that principle.

We in the South Carolina Association of Christian Schools do not believe that Christian schools should take Federal financial assistance. On the other hand, to deem an organization, especially a church school, as receiving Federal financial assistance because of a third-party connection is totally incomprehensible.

If a widowed mother who receives Social Security benefits elects to send her child to a Christian school kindergarten, that school, under the current proposal, would be receiving Federal financial assistance by the third-party connection.

The same would apply to the school where a retired military man sends his elementary student. What of the case of a recipient of the GI bill benefits who elects to send his child to a Christian school?

We all enjoy and use often our Interstate Highway System which has been paid for with Federal tax dollars. The list of possible third-party connections goes on: parks, fire departments, urban development programs, housing subsidies, farm price supports, and so forth.

Heretofore, Christian schools have not been considered third-party recipients under title IX. This bill, H.R. 700, would ensure that they will necessarily be so considered. And what of the church or synagogue from which some purchase of Bibles or other materials is made with third-party recipient funds?

Again, what will happen should some third-party recipient tithe to the church, cathedral, or synagogue from his benefits?

Under the rationale of H.R. 700 we all would be guilty of receiving some sort of Federal financial assistance. That may very well be the intent of the legislation in question. Be that as it may, it is totally unacceptable that churches should be controlled by the Government. This oblique takeover attempt is as infamous as it is ludicrous.

It is unthinkable that a church should be asked to break its convictions on moral issues and on the internal order of its organization. We have a strong religious conviction that women shall not be ordained. We use as our proof text, 1 Timothy 3:2 and 12. Bishops—pastors—and deacons are to be the "husband of one wife." That is a most difficult thing for a woman. Title IX would disagree.

We have a strong religious conviction that we are to put before our students models of family stability; that we should teach our boys to be men; that we should teach our girls to be women; and that we should do this in the context of scriptural principles. Title IX would deprive us of that right.

We, by conviction, cannot hire or retain those discovered to be homosexuals. Title IX would prohibit the exercise of that conviction.

We teach, by conviction, that the taking of life by euthanasia or by abortion is wrong in God's sight and we could not hire or retain those who believe in or practice either. Could we continue under title IX?

In conclusion, the legislation in question is transparently humanistic, if not in its origin, then certainly in its application. That Humanism is a religion has already been stated by the signers of the Humanist Manifestos I and II. Even the Supreme Court of the United States agrees with that. Let me quote some of the humanist beliefs from those two documents just mentioned:

One, "The many varieties of sexual exploration should not in themselves be considered evil."

Two, "* * * individuals should be permitted to express their sexual proclivities and pursue their lifestyles as they desire."

Three, "It also includes a recognition of an individual's right to die with dignity, euthanasia, and the right to suicide."

The beliefs of the religion of Humanism are diametrically opposed to what we believe the Bible teaches. Thus, to require a church school to come under title IX would not only be governmental entanglement in the affairs of the church, but would be an attempt to force us to embrace the beliefs of a religion that is alien to the Bible, which we believe to be the word of God, or final source of authority in matters of faith and practice.

The 37 words of the 1972 title IX statute barring sex discrimination in institutions receiving Federal financial assistance were translated into 16 pages of triple-column fine print regulations. Any attempt to force those regulations upon churches and their ministries represents a morass of governmental entanglement which is unconstitutional, unworkable, and totally repugnant to the christian community, which I represent.

Therefore, I respectfully request that H.R. 700 be rejected totally or that some relief language be added that would guarantee the continued freedom of religion granted to us by the first amendment of the Constitution of these United States of America.

[Prepared statement of Reece Yandle follows:]

PREPARED STATEMENT OF REECE YANDLE, EXECUTIVE DIRECTOR, SOUTH CAROLINA ASSOCIATION OF CHRISTIAN SCHOOLS

Mr. Chairman, Committee Members, Ladies and Gentlemen, my name is Reece Yandle. I am the Executive Director of the South Carolina Association of Christian Schools, an organization of 52 member schools with nearly 10,000 students and faculty members. I also speak for some 250 churches in the State of South Carolina. In addition, our Association operates as an affiliate member of the American Association of Christian Schools which has a membership of about 1300 Christian schools across this country. We are all greatly concerned that our religious freedoms are being severely threatened.

The passage of House Bill H.R. 700, the Anti-Grove City College Bill, would represent the greatest governmental intrusion into church, personal and private affairs in modern times. The provisions of this legislation would foster a means of total state control over the affairs of church schools and, ultimately, over the affairs of the churches themselves, because the churches and their schools are inseparable entities.

The Constitution of our country states flatly that "Congress shall make no laws respecting an establishment of religion or prohibiting the free exercise thereof."

This proposed legislation totally ignores that First Amendment guarantee of religious freedom.

Legal scholars agree that the pivotal word in that First Amendment statement is "respecting." "Respecting" is synonymous with "regarding" and "concerning." Professor Robert Cord, the author of a 1982 book on the First Amendment, concludes that it "prohibits Congress from making laws about, concerning, or regarding an establishment of religion." H.R. 700 would violate that principle.

We, in the South Carolina Association of Christian Schools, do not believe that Christian Schools should take Federal financial assistance. However, if certain schools elect to do so, they will surely have to come under the Title IX requirements. On the other hand, to deem an organization, especially a church school, as receiving Federal financial assistance because of a third party connection is totally incomprehensible.

The possibilities of application of Title IX requirements are limitless. Let me cite a few:

(1) Most of us, individuals, businesses, and churches alike, benefit from sewer systems which are partially funded with Federal monies.

(2) Our local law enforcement agencies also receive Federal funding. We certainly benefit from that. Protection is one of the foremost duties of government.

(3) If a widowed mother who receives Social Security benefits elects to send her child to a Christian school Kindergarten, that school, under the current proposal, would be receiving Federal financial assistance by the third party connection. The same would apply to the school where a retired military man sends his elementary student.

(4) What of the case of a recipient of the G.I. Bill benefits who elects to send his child to a Christian school?

(5) We all enjoy and use often our Interstate Highway System which has been paid for with Federal tax dollars.

(6) The list of possible third party connections goes on: parks, fire departments, Urban Development Programs, housing subsidies, farm price supports, etc.

Here to now, Christian schools have not been considered third party recipients under Title IX. This bill, H.R. 700, would insure that they will necessarily be so considered. And what of the church of synagogue from which some purchase of Bibles or other materials is made with "third party recipient" funds? Again, what will happen should some third party recipient tithe to the church, cathedral, or synagogue from his benefits?

Under the rationale of H.R. 700 we all would be guilty of receiving some sort of Federal financial assistance. That may very well be the intent of the legislation in question. Be that as it may, it is totally unacceptable that churches should be controlled by the government. This oblique takeover attempt is as infamous as it is ludricous.

It is unthinkable that a church should be asked to break its convictions on moral issues and on the internal order of its organization. We have a strong religious conviction that women shall not be ordained. We use as our proof text 1 Timothy 3:2 & 12. Bishops (pastors) and Deacons are to be the "husband of one wife." That is a most difficult thing for a woman. Title IX would disagree.

We have a strong religious conviction that we are to put before our students models of family stability; that we should teach our boys to be men; that we should teach our girls to be women and that we should do this in the context of Scriptural principles. Title IX would deprive us of that right.

We, by conviction, cannot hire or retain those discovered to be homosexuals. Title IX would prohibit the exercise of that conviction.

We teach, by conviction, that the taking of life by euthenasia or by abortion is wrong in God's sight and we could not hire or retain those who believe in or practice either. Could we continue under Title IX?

In conclusion, the legislation in question is transparently humanistic, if not in its origin, then certainly in its application. That Humanism is a religion has already been stated by the signers of the Humanist Manifestos I and II. Even the Supreme Court of the United States agrees with that. Let me quote some of the Humanist beliefs from those two documents just mentioned:

(1) "The many varieties of sexual exploration should not in themselves be considered evil." (Exhibit #1)

(2) ". . . individuals should be permitted to express their sexual proclivities and pursue their life styles as they desire." (Exhibit #1)

(3) "It also includes a recognition of an individual's right to die with dignity, euthenasia, and the right to suicide." (Exhibit #1)

The beliefs of the religion of Humanism are diametrically opposed to what we believe the Bible teaches. Thus, to require a church school to come under Title IX would not only be governmental entanglement in the affairs of the church, but would be an attempt to force us to embrace the beliefs of a religion that is alien to the Bible, which we believe to be the Word of God, our final source of authority in matters of faith and practice.

The 37 words of the 1972 Title IX statute barring sex discrimination in institutions receiving "Federal financial assistance" were translated into 16 pages of triple-column fine print regulations. Any attempt to force those regulations upon churches and their ministries represents a morass of governmental entanglement which is unconstitutional, unworkable, and totally repugnant to the Christian community which I represent.

In addition, the ambiguity of the regulations and their application provides the possibility that churches could be hailed into court for lengthy and extremely expensive legal battles. Many of those churches simply could not survive such an ordeal financially.

Therefore, I respectfully request that H.R. 700 be rejected totally or that some relief language be added that would guarantee the continued freedom of religion granted to us by the First Amendment of the Constitution of these United States of America.

The Individual

Fifth: The preciousness and dignity of the individual person is a central humanist value. Individuals should be encouraged to realize their own creative talents and desires. We reject all religious, ideological, or moral codes that denigrate the individual, suppress freedom, dull intellect, dehumanize personality. We believe in maximum individual autonomy consonant with social responsibility. Although science can account for the causes of behavior, the possibilities of individual *freedom of choice* exist in human life and should be increased.

Sixth: In the area of sexuality, we believe that intolerant attitudes, often cultivated by orthodox religions and puritanical cultures, unduly repress sexual conduct. The right to birth control, abortion, and divorce should be recognized. While we do not approve of exploitive, denigrating forms of sexual expression, neither do we wish to prohibit, by law or social sanction, sexual behavior between consenting adults. The many varieties of sexual exploration should not in themselves be considered "evil." Without countenancing mindless permissiveness or unbridled promiscuity, a civilized society should be a *tolerant* one. Short of harming others or compelling them to do likewise, individuals should be permitted to express their sexual proclivities and pursue their life-styles as they desire. We wish to cultivate the development of a responsible attitude toward sexuality, in which humans are not exploited as sexual objects, and in which intimacy, sensitivity, respect, and honesty in interpersonal relations are encouraged. Moral education for children and adults is an important way of developing awareness and sexual maturity.

Western Maryland settles suit

College pulls down religious symbols

By ANTERO PIETILA

Westminster's Western Maryland College permanently has removed all religious symbols, including crosses from atop its chapels, and has agreed to strict quotas that limit the number of Methodists on its board and teaching staff as part of settling a suit which disputed its right to get public support.

The college, which formally was supported by the United Methodist Church, also has agreed "neither to sponsor nor conduct any religious services," to "remain totally neutral as to the spiritual development [in a religious sense] of its students" and not to include prayers, religious hymns or sermons in its graduation exercises.

These stipulations are part of a settlement the college made in April with the American Civil Liberties Union and Americans United for Separation of Church and State which ended three years of litigation over the college's right to get public funds.

The two organizations maintained in the suit that Western Maryland, contrary to its contention that it had severed its ties with the Methodist church, was a church-related college and should not receive public funding.

At stake was $373,000 in unrestricted state and federal funds

See WESTERN, C3, Col. 2

The cross atop spire at Western Maryland is gone.

Religion case is settled; symbols are removed

WESTERN, from C1

for 1975 and similar amounts annually. The college said the suit had cost it nearly $75,000 a year in fees.

John C. Roemer 3d, executive director of the American Civil Liberties Union, said his organization's Maryland branch has never before made a similar agreement.

"Well, we simply said to them: 'Look, if you are not church-related, take the symbols down; if you want to keep the symbols, we'll keep the money in litigation,'" Mr. Roemer said.

Four other institutions named in the suit have taken their case to the Supreme Court. They are Mount St. Mary's College, Loyola College, the College of Notre Dame and St. Joseph's College, which folded in June, 1973.

Ralph John, president of Western Maryland, said yesterday that crosses from atop the campus's "Big Baker" and "Little Baker" chapels were taken down in early June.

"They are now in storage," he said. "They were interpreted as sectarian symbols; we'll just hold on to them as artifacts of the college."

So detailed in the college's agreement with the two plaintiffs that while banning religious symbols in buildings and public rooms of the campus, it allows the possession and display of them "in student dormitory rooms at the option of students therein or the storage of such indicia in storage facilities on campus."

The quotas the college agreed to are the following:

- At the earliest feasible date (but no later than July 1, 1981), at least 50 per cent of the teaching faculty of the philosophy and religion departments shall be non-Methodist and at least 50 per cent of all religion classes shall be taught by non-Methodists.
- By July 1, 1977, 50 per cent of all philosophy classes shall be taught by non-Methodists.
- The college also has agreed to have a board of trustees "of diverse religious backgrounds" that will include no more than 10 per cent of persons who are Methodist ministers.

Western Maryland has an enrollment of about 1,300 students. According to Dr. John, most of the students are either Methodists or Catholics, although there are also many Presbyterians, Baptists, Episcopalians and Jews.

EXHIBIT #2

THE SUN

Tuesday, August 19, 1975

This religious institution, which received direct public funding, had to pull down the crosses on its chapels and was forced to remain "totally neutral as to the spiritual development of its students." We then, as third party beneficiaries of Federal financial assistance, would also have to pull down our crosses. We would not be allowed to teach our Bible-based convictions that homosexuality is forbidden by God; that abortion is murder; that immoral conduct is sin in the sight of God.

(added by Reece Yandle
Executive Director
S.C.A.C.S.

Mr. EDWARDS. Thank you very much, Mr. Yandle.

The fourth member of the panel to testify is Steven Demme, pastor, Open Door Chapel, McDonough, GA.

STATEMENT OF STEVEN P. DEMME

Mr. DEMME. Mr. Chairman, sirs, I appreciate this opportunity to speak to you. I am here as an educator of sorts; as a former public schoolteacher; as the pastor of Open Door Chapel; and primarily as the father of three small boys.

My testimony will be concentrating on the effects of the proposed civil rights legislation and its influence on education in general, and its far-reaching effects on private and Christian education in particular.

I am also an alumnus of Grove City College and have followed her progress through the courts and the ensuing related legislation. In seeking to understand the issues involved I have acquired a measure of knowledge along with some legitimate fears about H.R. 700 and S.B. 272. I believe in the principle of civil rights and seek to employ those principles in my small sphere of influence.

Discrimination on the basis of race, color, national origin, sex, a handicap, or age, is wrong. The spirit of the legislation is correct and agrees with the spirit of equality and fairness that has distinquished the United States of America from her inception.

While agreeing with the intent, I tremble over some of the wording, and as I have said, harbor concern over the implications. Unless these bills are carefully written we may provide a foundation for destroying certain fundamental rights while defending civil rights.

I believe that most Americans agree with the intent of this legislation, but it is the scope that I would like to see restricted, and this hinges on the definition of a recipient. It seems only fair and right that as the Federal Government distributes the taxpayer's money in the form of grants and scholarshps that the individual or institution receving that aid should be accountable to Federal guidelines.

As you receive direct aid, you should be directly responsible. But to define a recipient, as the Supreme Court did in the *Grove City* case, as anyone who benefits even indirectly from Uncle Sam, would be opening Pandora's box to virtually include every aspect of life in America as we know it.

To say that Grove City College is an indirect beneficiary of Federal moneys because Joe Student applies his Pell grant to the school of his choice is merely stretching the point, it is another example of runaway government control in the private sector.

To say, hypothetically, that Open Door Chapel is an indirect recipient of Federal funding because Joe Churchmember puts 10 percent of his Social Security check in the collection plate smacks of life in old mother England about 300 years ago.

Where does Uncle Sam's authority end? This line of reasoning applies as well to private and/or Christian schools. My wife and I have strong convictions about who should teach our children, what they should be taught, when they should start school, and how they should be taught.

Is our "fundamental right" as defined by the courts in *State* v. *Wisvera* (1979) which reads:

> Thus it has long been recognized that the right of the parent to guide the education, including the religious education of his or her children is indeed a "fundamental right."

Is this freedom to be subservient to Federal jurisdiction? You know my concern from a private and/or Christian school perspective. Let me add that although I am well aware of the compelling interest of the state in insuring an educated citizenry. The vested interest of the state will never rival that of the average mother and father of America.

Before public schools were ever off the ground America boasted a literacy rate upward of 90 percent. After 140 years of public financed education and the postsputnik advances we learn that one out of five adult Americans is functionally illiterate, and remedial classes in our postsecondary and secondary schools abound.

I, myself, taught 10th graders, who tested out at 5th and 6th grade levels. I attribute much of the problem to Government intervention. School districts work actively to attract more Government funded programs and thus cash in on free money instead of working to ensure that they are adequately representing the parents of the children they were hired to teach.

You may well wonder what this all has to do with H.R. 700 and S.B. 272. I fear that these bills, without the Hatch amendments, which I strongly recommend, would seriously threaten, in the name of civil rights, my fundamental constitutional freedom of religion and my rights as a parent. I also believe that governmental intervention at every level of the educational spectrum has done and will do more harm than good.

Please allay my fears and restrict the scope of these civil rights bills to apply only to those directly receiving Federal funds. I urge you to adopt the Hatch amendments without which my fears will undoubtedly materialize. I believe they will fulfill the spirit of true civil rights without infringing upon the sacred territory of fundamental and inalienable rights.

If I may be so bold as to suggest that you look for ways to diminish government involvement in education, as history has shown America experienced her highest rate of literacy when government involvement was at its lowest ebb. I agree along with the majority of the American people, President Reagan, the new Secretary of Education, and the courts, when they said in the case of *Wisconsin* v. *Yoder* (1972):

> The history and culture of Western Civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is established beyond debate as an enduring American tradition.

If these bills pass as they stand, the constitutional guarantees that I hold dear of nongovernment interference of religion and my rights and prerogative as a parent will be seriously affected and jeopardized.

Thank you for allowing me to give my testimony.

[Prepared statement of Steven P. Demme follows:]

PREPARED STATEMENT OF STEVEN P. DEMME, PASTOR, OPEN DOOR CHAPEL, McDONOUGH, GA

Mr. Chairman, Sirs: I appreciate this opportunity to speak to you. I'm here as an educator of sorts; as a former public school teacher; as the pastor of Open Door Chapel; and primarily as the father of three small boys. My testimony will be concentrating on the effects of the proposed civil rights legislation and its influence on education in general, and its far reaching effects on private and christian education in particular.

I'm also an alumnus of Grove City College and have followed her progress through the courts and the ensuing related legislation. In seeking to understand the issues involved I've acquired a measure of knowledge along with some legitimate fears about H.R. 700 and S.B. 272. I believe in the principle of civil rights and seek to employ those principles in my small sphere of influence. Discrimination on the basis of race, color, national origin, sex, a handicap, or age is wrong. The spirit of the legislation is correct and agrees with the spirit of equality and fairness that has distinguished the United States of America from her inception. While agreeing with the intent I tremble over some of the wording and as I've said, harbor concern over the implications. Unless these bills are carefully written we may provide a foundation for destroying certain fundamental rights while defending civil rights.

I believe that most Americans agree with the intent of this legislation but its the scope that I would like to see restricted, and this hinges on the definition of a "recipient". It seems only fair and right that as the federal government distributes the taxpayer's money in the form of grants and scholarships that the individual or institution receiving that aid should be accountable to federal guidelines. As you receive direct aid you should be directly responsible. But to define a "recipient", as the Supreme Court did in the Grove City Case, as anyone who benefits even indirectly from Uncle Sam would be opening Pandora's box to virtually include every aspect of life in America as we know it. To say that Grove City College is an indirect beneficiary of federal monies because Joe Student applies his Pell Grant to the school of his choice is not merely stretching the point, its another example of runaway government control in the private sector. To say, hypothetically, that Open Door Chapel is an indirect recipient of federal funding because Joe Churchmember puts 10% of his Social Security check in the collection plate smacks of life in old mother England about three hundred years ago. Where does Uncle Sam's authority end? This line of reasoning applies as well to private and/or christian schools. My wife and I have strong convictions about who should teach our children, what they should be taught, when they should start school, and how they should be taught. Is our "fundamental right" as defined by the courts in State vs. Whisner (1976) which reads: "thus it has long been recognized that the right of the parent to guide the education, including the religious education of his or her children is indeed a "fundamental right."

Is this freedom to be subservient to federal jurisdiction?

You now know my concern from a private and/or christian school perspective. Let me add that although I'm well aware of the "compelling interest" of the state in insuring an educated citizenry. The vested interest of the state will never rival that of the average mother and father of America. Before public schools were ever off the ground America boasted a literacy rate upwards of 90%. After one hundred and forty years of public financed education and the post-sputnik advances we learn that 1 out of 5 adult Americans is functionally illiterate and remedial classes in our post secondary and secondary schools abound. I myself, taught tenth graders, who tested out at a fifth and sixth grade level. I attribute much of the problem to government intervention. School districts work actively to attract more government funded programs and thus cash in on "free" money instead of working to insure that they are adequately representing the parents of the children they were hired to teach.

You may well wonder what this all has to do with H.R. 700 and S.B. 272. I fear that these bills, without the Hatch Ammendments which I strongly recommend, would seriously threaten, in the name of civil rights, my fundamental constitutional freedom of religion and my rights as a parent. I also believe that governmental intervention at every level of the educational spectrum has done and will do more harm than good.

Please allay me fears and restrict the scope of these civil rights bills to apply only to those directly receiving federal funds. I urge you to adopt the Hatch Ammendments without which my fears will undoubtedly materialize. I believe they will fulfill the spirit of true civil rights without infringing upon the sacred territory of fundamental and inlienable rights. If I may be so bold as to suggest that you look for ways to diminish government involvement in education as history has shown America experienced her highest rate of literacy when government involvement was at its lowest ebb. I agree along with the majority of the American people, President Reagan, the new Secretary of Education and the courts when they said in the case of Wisonson vs. Yoder (1972): "the history and culture of Western Civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."

If these bills pass as they stand, the constitutional guarantees that I hold dear of non government interference of religion and my rights and prerogative as a parent will be seriously affected and jeopardized. Thank you for allowing me to give my testimony.

Mr. **Edwards**. Thank you.

The last member of the panel to testify is Susan M. Perry, who is with Nash & Edgecombe, Black Political Caucus of Wilson, NC.

Ms. Perry, you are welcome and you may proceed.

STATEMENT OF SUSAN M. PERRY

Ms. **Perry**. Thank you, Mr. Chairman.

First I would like to thank this committee for holding this hearing in Atlanta, GA. I would like to thank the committee for the opportunity to sit on this very learned panel.

In listening to the testimony of my copanelists I would like to comment later in my statement on a couple of comments that I have heard.

I would like to say that I am bringing you greetings from Wilson, NC, and Nash, Edgecombe County in that if you are not familiar with the State of North Carolina, that is located in the eastern part of the State. It is basically a rural area, an agriculture area, and tobacco is definitely still king in that area. But we are also experiencing a transition in our State economy as a whole which is affecting our area and it is a transition to what they call high tech.

I listened earlier to Mayor Young's testimony and he talked about how enforcement of civil rights laws has an impact on the confidence of private investors willing to come to new areas and certainly it is having an impact in our area where we are not a city, we are a small town still trying to come to grips with some problems of discrimination that have plagued our area for a very long time and I think that is part of the view that I want to bring to this hearing this morning.

I am speaking from the perspective of a person who has been involved as an educational advocate mainly at the elementary and secondary level for a period of years, both as an attorney and as a member of national boards which address these concerns from a low income perspective of low income children.

I think the points that I really want to raise have to do with the impact of a national policy as stated in a law and how that affects voluntary compliance, because I think that it is very important and I do want to share with you an anecdote of a situation which occurred in my community.

I did listen to Dr. Pettit as he spoke earlier about the situations at his Institution and I can certainly appreciate that they are moving, as Dr. Blake spoke to you about still on the cutting edge of these affirmative action issues. But as I listened to what Dr. Pettit spoke about I did recognize that the common element in each of the situations that he mentioned seemed to be a new factor which was coming into play and that was the factor of equity and access both at the revenue sports level and the tenure situation and in the third situation with the Hispanic professor and that it is bringing change to the university and I can understand that change does affect the way business has been done in the past but I would say to Dr. Pettit—and I can tell from his statement that he is an advocate for civil rights—that change is painful but what it is these laws are designed to do is to give us the opportunity to really review our actions and, as Dr. Blake said, it is necessary to scrutinize what we are doing and to make sure there is not an element of discrimination involved.

I also listened to both Mr. Yandle and to the other speaker, Pastor Demme, and I was interested in what you were saying because I too am a mother and I am very concerned about the Christian education of my own child and I chose to send that child to a Bible-based day care center and I support parents who make that choice. But, here again, I believe that it is important to hold these institutions accountable so long as they make the decision to accept Federal funds.

I think the receipt of financial aid by an institution is not a line that is drawn too broadly. I think at that level that institution ought to be covered and then to that exent I disagree with the *Grove City* decision and I see a need to pass this legislation that this panel is considering today.

I, though, do not agree with the point that was made earlier that if a person who contributes to a church, such as I do—I tither—I know probably the other panelists do, too—if my salary is paid by a Federal agency that makes that particularly religious institution automatically subject.

I think that line would be objectionable to me. I don't see that as a realistic possibility right now in terms of the interpretation of the history of what is going on with these civil rights laws or with the interpretation of H.R. 10 as it is drafted by us today.

Now, finally, I do want to share an experience that occurred in my town because I think it is important to understand how these things work at the practical level.

I was interested in the comments earlier today about independent contractors and this kind of thing. I think those are interesting hypotheticals, but in the world where I live, which is not a community that had been impacted by the civil rights movement, we are in a very rural area and the civil rights movement sort of went to Greensboro and then went to the Deep South and passed us by—so we are a community where we are still trying to come to grips with these problems and perhaps you might think about it as a place that maybe either was 20 or 30 years ago and in this kind of community it is really important to have the Government mandated to enforce the civil rights laws.

Again, I think of what Mayor Young talked about where you have policymakers who probably in terms of their own personal commitments and where their personal consciences are coming from want to enforce a law but the sacrifice, the political sacrifice that sometimes is necessary in a community that has not made that change yet is overwhelming.

In my own town, which is a town of about 42,000 people, it is a town that is in the process of discussing school merger because our inner city school system is predominantly black school, the school merger discussion had gotten stalled and about 2 years ago the board of education decided that it would take steps to assign students by race within the classroom.

This the black community believed did violate title VI and the black school board members raised that point and the vote by the school board was straight across racial lines, the white school board members in support of the student assignment plan and the blacks voting against it.

That particular proposal, which would have gone into effect following fall, was brought to the attention of the Office for Education and as they handled these situations they first of all informally contacted the school officials and let them know that their interpretation was going to be that this particular proposal was offensive, did fly in the face of title VI.

With that information in mind, without any school suit, without any termination of funding, that particular school board met in executive session. Here is a copy of the news release on it. And they rescinded this student assignment plan, they voluntarily rescinded it.

I felt good about that decision. It kept my faith in the laws; it kept my faith in those policymakers.

And just one quote there from one of the school board members was that there was no reason to engage in a long process that would be futile and keep the system upset for a long time. So once the lines were drawn, once the policy was clear that it was in violation, they voluntarily rescinded that.

Now, as an attorney who has been involved in educational litigation, I say to you and I join with my former bar member who testified earlier, we like to go for voluntary compliance where possible. It is less costly, it is a prevent, a step that can be taken before the policy is completed.

That is the type of action we seek out because these other court cases are more costly.

But there the school board did react and I think I need to say to you that there are communities across the South that are just like this community.

This particular school board was an appointed school board appointed by the city council. That is the particular setup we have in that town. That city council has six white members and one black member in a city that is 42 percent black.

Now, we have a lawsuit against that election system of the city council claiming that it violates the voting rights principles, and here again the Justice Department supported our position and the city council is now in settlement negotiations with plaintiffs' counsel of which I am one.

So I am saying that the mandate, the national mandate and the clear delineation of what constitutes a civil rights violation is very important for this kind of voluntary compliance.

I want to thank you for the hearing, the members of the hearing panel and all of you for your attention to my statement.

Mr. EDWARDS. Well, thank you. We appreciate your testimony.

Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

I am very impressed with this panel and I want to commend everybody for their testimony. I only have two questions for Dr. Pettit, One, of course, is that you understand that, maybe you haven't looked at the law. I appreciate your concerns in this bill although, in the 33 institutions system of Georgia, one offending institution wouldn't cut off the funds at Georgia State. So you may be relieved of that.

The enforcement is pinpointed, and you would not be affected.

What does affect you is that the coverage is by system. I think you would appreciate that otherwise we would have the Feds following hundreds of systems trying to find discrimination, so they start off with you as covered because you are in the system. But the enforcement only goes to the offending entity.

Now, to show you how we agree with you, I'll tell you that the record of enforcement and cutoff is minimal. I asked the staff to give me a record of whoever got cut off because the harm wouldn't just go to you as one of the 33 institutions, it would go more so from my point of view to the hundreds of thousands of students who would be adversely affected by one administrator who for whatever reasons decided not to enforce it.

I just wanted to share that with you.

Dr. Blake, I don't have anything to add to your testimony. I just gather—the reason I keep asking the questions about this change of climate, which you documented very well, is that in Washington, where we are far away from these matters, it is very easy to get misimpressions and one of the reasons we travel here—Chairman Edwards has got us going all over the country—because we might not be able to get you all here on a given day and certainly not people from all over around the country, so the Members take their time to come to you.

I would like to invite you to continue to document with me and Mr. Hayes any retrogression that has really been reported by all the civil rights agencies, the civil rights leadership conference, everybody I have talked to, but, of course, we have to prove it. We can't go by impressions. And your day-to-day experiences are very, very important.

I say this same thing for attorney Perry. Although I don't know if I should ask you that question because I am not sure if you are moving forward at all from the way it began to sound. What you really need is some serious civil rights activity to have something to retrogress from.

But, you should know that it is not that much different in a lot of other places. I picked up the Saturday Washington Post, the day before yesterday, and a restaurant owner in Marshall, VA, was just sentenced to jail for refusing repeatedly to serve black customers. He had a long record of offenses. I have no idea how far Marshall, VA is from the Capitol, but the point is that we are in this all together; don't you just feel lonely out there.

Now, with Mr. Yandle and Reverend Demme, I appreciate your points of view and, of course, you know that Social Security recipients don't trigger, and never have, these civil rights acts. I never had anybody's fund cut off because somebody was on Social Security. Have you?

Mr. **Yandle**. No; there is an old adage that says what may happen will happen. We have experience, we expect the worst, and this is one of the reasons that we feel this way.

Mr. **Edwards**. What experience have you had?

Mr. **Yandle**. Not on Social Security particularly. I understand there is some provision in title IX even for a religious exemption. If I understand it it is something that has to be applied for. Is that correct?

Mr. **Conyers**. If you get Federal funding.

Mr. **Yandle**. Our schools will not take Federal funding. Again, the student aid triggered this whole thing in the *Grove City College* case on the basis of student loans; is that correct?

Mr. **Conyers**. Yes.

Mr. **Yandle**. Our grant. This is for lack of a better term, what I call a third party recipient, not a direct grant or gift to the school.

I go back again to a report written by the U.S. Commission on Civil Rights in 1975 that States—I have that with me. I would like to read that so I don't misquote it.

This is, again, about 3 years after passage of the title IX bill.

It says:

> In fact, since tax exemptions are probably Federal financial assistance, it is likely that private schools already are under the jurisdiction of Title IX.

Quoting further from the same document:

> This group recommends IRS should apply the same standards and procedures to church-sponsored private schools as it does to all other private schools.

Following on the heels of that in 1978 we had the proposed regulations which came from the IRS which would reach into all of our private Christian schools and set racial quotas and other things and that, of course, is on the back burner right now.

We have not been able to get assurance from the IRS that will not be taken out at some future time, but as long as things like that are hanging over our heads, gentlemen, we can do nothing but expect the worst and prepare for it.

Mr. **Conyers**. Finally, is there anything in H.R. 700 that engenders your fears, assuming that there is something on the back burner and anything else?

I want to know about it because I want to protect your rights and make sure that you continue to be unaffected by these laws since you chose not to accept Federal funds.

Mr. **Yandle**. I suppose that the passage of it would give more credence to the statements that this Commission has made here that we are now open targets for this type activity.

Mr. **Conyers**. Have you seen the bill?

Mr. **Yandle**. I have not read it in full.

Mr. **Conyers**. Yes, sir.

Mr. **Demme**. I am sorry for making a bad illustration of Social Security, along the Hardware Hank and mom and pop grocery store, but I understand the Hatch amendment would apply to the Senate version, but I heard a number of times today—I would like to have—people have said, quote unquote, if it is going to err let's err on the broad side, I said if it is going to err let's err on the narrow side, if indeed it is a question of how far it will go, could you not adapt the Hatch amendment or some form of that to H.R. 700 to make sure that you will—let me remove the doubt. Allay my fears, as I said before. Because in my mind Grove City people say it is too restrictive; I say it is not restrictive enough.

Mr. CONYERS. I haven't seen the Hatch amendment. Have you? Do you have some——

Mr. DEMME. No.

Mr. CONYERS. I haven't seen them either. I would be happy to consider them when they come up.

Let me tell you one thing. Financial assistance definition, gentlemen, is not a change or altered in any way to this bill, what defines financial assistance is the same thing that always defined for the past 20 years. So we can assure you that this is why the bill is titled the Restoration Act. It merely goes to correct the Supreme Court decision and it does not in any way impair or change the definition and financial assistance as you have understood it over the years.

Mr. YANDLE. Does this in fact say if a student receives a grant or a loan he goes to a given institution that that institution is then under these requirements.

Mr. CONYERS. Well——

Mr. YANDLE. Is that not what happened in the Grove City case?

Mr. CONYERS. That is exactly what we changed, right. Now, you don't accept financial grants or loans; is that correct?

Mr. YANDLE. The elementary schools and grammar or high schools would not, but also I am speaking for Christian colleges.

Mr. CONYERS. Well——

Mr. YANDLE. The Christian college does not accept a grant outright, no, sir.

Mr. CONYERS. Or loans.

Mr. YANDLE. I am not speaking of colleges. I am speaking of students who would go to the college.

Mr. CONYERS. I am speaking of them, too.

Mr. YANDLE. You are saying that that university or college would be covered?

Mr. CONYERS. Of course they would be covered.

Mr. YANDLE. Although the money is given to the students?

Mr. CONYERS. But that is the way the law has always been. You want to change the law.

Mr. YANDLE. Maybe this is not a correct interpretation of the law. How can you say that that *x* number of dollars the student gets is spent in the university or college of his choice?

Mr. CONYERS. Well, if he goes to your school, a private institution, I can only assume he is voluntarily choosing to go there.

Mr. EDWARDS. This bill doesn't have anything to do with that issue.

Mr. YANDLE. This is what the issue is.

Mr. EDWARDS. H.R. 700 does not identify anything like that. It happens that the courts have said that if there are student loans, Federal student loans, then an institution is covered, but H.R. 700 does not address that issue.

Mr. YANDLE. Institutionwide.

Mr. EDWARDS. It doesn't address whether or not the school is covered.

Mr. CONYERS. The one thing *Grove City* didn't change was *Grove City* was recipient under the existing Federal laws, the decision did not change that. So I want to assure you once more that there is no change in the definition of financial assistance, so all of these hypotheticals that you have raised here I am glad we came to anticipate, if for no other reason than to assure you there isn't any change.

You were not subject to Federal intervention before the *Grove City* decision; you are not subject now.

Mr. YANDLE. Even though the Civil Rights Commission has recommended to the IRS and has already written out the provision?

Mr. CONYERS. The Civil Rights Commission has no legislative authority.

Mr. YANDLE. But IRS has legislative authority.

Mr. CONYERS. IRS sets the policy and tax exemptions to institutions which is a policy matter of the administration and the Treasury Department which is a part thereof. That is not before us in this legislation in H.R. 700.

Mr. EDWARDS. We are going to have to move along. Time has expired. Mr. Sensenbrenner?

Mr. SENSENBRENNER. I will be brief. First of all, I have just a factual question of Dr. Pettit. Is the governance of higher education in Georgia all unified under one system?

Mr. PETTIT. Yes; it is. We have a common board of regents for the entire university system of 33 institutions including junior colleges, senior colleges and universities.

There is a board of regents and an executive officer called the chancellor. Each campus has a president. We have authority and a lot of autonomy but it is derived——

Mr. SENSENBRENNER. That would mean that under the definition contained on page 3 of this bill that if one campus or one department of one campus of the University of Georgia system were adjudged to have illegally discriminated the Federal funds would be removed from all of the other campuses and all of the other departments of the entire system and that campuses that have perfect civil rights compliance record would lose their Federal funding. Is that correct?

Mr. PETTIT. I think the reality has been we have two kinds of things. One is we are one of the Adams States where the State itself was the target and therefore the university system and therefore all of the institutions were liable under whatever action might be taken against the State and State system. That is one case.

The other case is more pertinent to me because we are the contractors with DOD and NASA and the others and it is of concern, of course, in our discharge of the work and everything we try to do yet because the athletic department on campus is under enforcement because of title IX, that the entire 90 million a year of sponsored research is guilty and in jeopardy.

Mr. SENSENBRENNER. That is a little concern in my opinion.

I would like to turn to Mr. Yandle.

Mr. PETTIT. One more thing on that. That there is a mechanism that triggers an update on the whole situation on the campus.

That is when you have a contract and it has been at a million dollar level and delays in the investigation could cost the project and researchers and indeed the Government itself a large amount of money even though in the end we are exonerated.

That can be problems excessive administrative delays as well as findings in the end of guilt or otherwise.

Mr. SENSENBRENNER. Turning to Mr. Yandle, as Pastor Demme I think that testimony that has come before the committee before today is unanimously in agreement that a college or university that accepts no direct Government funds but does accept students who receive guaranteed student loans, Pell grants and GI bill funds would be brought in under this bill.

This really is not a debatable point in terms of what the bill does. It might be a debatable point as to whether it should be that way, but it is not a debatable point on what the bill does.

One of my concerns that has been expressed to me by several people is whether these private schools would simply refuse to accept any students that were receiving guaranteed student loans, Pell Grants and GI Bill funds so that they could maintain their freedom from Federal interference and would not in effect deny the right of a private education to more minority students because they are more dependent upon Federal funding for their education, particularly as it relates to private schools where the tuition is significantly higher than tax supported schools.

Is this fear a justified fear?

Mr. YANDLE. I could cite you one instance of that where a GI was refused GI benefits to attend a certain university because that university had a ruling against it of that type. He chose to work still and pay his own way and not have the benefits.

Mr. SENSENBRENNER. Second, last year's bill attempted to redefine the definition of recipient and this year's bill attempts to redefine the definition of what program or activity triggers coverage under the bill.

My reading of the testimony indicates that the latter attempt, the attempt to redefine program or activities is far broader than attempting to redefine recipient.

Have either of you looked into the situation and, if so, what are your opinions on it?

Mr. DEMME. Let me ask you the first question first because as an alumnus of Grove City I have to give more money now because Pell grants won't be accepted anymore, that is a fact, and they have set up their own loan fund.

I will probably be writing letters to my classmates encouraging them to increase their donations.

But let me ask you a question. I am not a lawyer, don't pretend to be. What you just described where a minority would be denied "a right to a private education," is kind of what I was feeling for when I wrote this testimony, that isn't that kind of a denial of a fundamental right of every American to have private free education.

So what I am saying is, perhaps in trying to defend civil rights, aren't we maybe infringing on certain fundamental rights?

I don't know how many are financial. Already some vents at Grove City which is tuition is still $5,000—room and board and tuition, et cetera, one of the best buys in American education.

Mr. SENSENBRENNER. I am just very fearful that legislation which is very well intentioned may have the opposite effect when it is placed into practice.

I think we have to be very careful of that and listen to people who are actually on the front lines to find out what the long-term implications are, if we draft a bill that ends up closing doors to blacks, to women, to Hispanics, to handicapped people, rather than opening them up, whose purpose have we served?

Thank you, Mr. Chairman.

Mr. DEMME. I agree that the program or activity should be restricted to a department or athletic program instead of institutionwide.

For that very reason, the fact I think this whole *Grove City* case was silly, if I can use that vernacular, that school has never discriminated. It is a model of nondiscrimination. It has always been free enterprise. Everything is in the black. There is no—don't have any loans outstanding on buildings built. It goes on and on and yet they were forced to sign compliance forms when I was there I remember.

It would take two full-time employees just to be hired to fill out forms for no reason other than to fill out forms.

Small institution with the fragile budget $30,000 a year additional budget, that gets ridiculous, now the financial department has been because they define program Supreme Court narrow, institutionalwide financial aid department is under Government jurisdiction, the rest of the school isn't.

Mr. SENSENBRENNER. The *Grove City* decision did determine that Grove City College was a recipient of Government funds even though it received them indirectly. What they did say was the definition of program or activity was the narrow one that was objected to.

Mr. EDWARDS. I am sure that the gentleman was sincere in making that statement that it takes two employees, to fill out the forms. We should instruct staff to find out from the Department of Education if that kind of stupid paper work—I use that word advisedly, goes on there. If it is true then something is wrong. We will try to find out. That was a valuable suggestion you made that is ridiculous, it should take 15 minutes a year.

Mr. BLAKE. In response to the earlier comments about there being a serious consequence the bills would have negative effect on the choices of blacks and other minority students and so on, it is my understanding, I may need to be corrected, the only places where that there is a concern here for institutions who in some way may be discriminating on the basis of race, and that the force of any remedy or anything else happening only flows if there is some problem in terms of racial discrimination or whatever. As long as the institution is fair and accepts people who come without regard to race or sex, I don't see how such institutions would have any particular problem with the kind of legislation that is being put forward nor do I really understand what the fear is of the Federal Government doing anything more than moving against anybody who is not operating in those areas.

I think that my view is that a Federal law should be crafted in a way to protect people's religious freedoms but from bitter experience we have learned that if the Federal law does not force all kinds of organizations to ask the questions about nondiscrimination, or to review their practices, then the inertia of history the way people do things sometimes intentionally sometime with no intent at all, blacks don't get in, they don't get jobs, they don't get in school, simply because the organization through inertia of history do not include them in any effective way in what they do.

So it is extremely important that all kinds of organizations, they have to ask them these questions. If they are to ask themselves these questions, and then they move to try to deal with that, then in turn I would suspect that most people of good will are going to wind up in compliance and are not going to have any concern about being regulated or what have you where there is a dispute I would be strong advocate of trying to keep the dispute process simple and in a straight line so that you don't tie up everybody for months and months and months and that people can get their views on the record very quickly and very officially so that they could settle the issues and go on doing their business of education or Federal contracting or whatever.

Mr. EDWARDS. Mr. Hayes?

Mr. HAYES. Mr. Chairman, thank you very much, but in the interest of time, I had several questions but I am going to dispense with raising them.

I do want to commend all members of this panel here. You have been pretty clear in delineating your views for and against the proposed legislation H.R. 700.

I have one thing that I would like to see if there is a difference, I don't know, I have been trying to find out. I noticed, Mr. Yandle, you seemed, you expressed a feeling of infringement on the religious freedoms, in the proposed H.R. 700, and you went into what I categorize as some ideological areas and religious doctrines where there are diverse opinions.

You mentioned the example, the whole issue of abortions, attainment of women, or containment of women, as you well know, some of us are really concerned about the child who is already here as to whether or not they are going to be able to continue to survive, particularly the disadvantaged ones where the school lunches and everything else are being threatened with elimination from the Head Start on up. Student loans. And when you get up into the higher areas of education hence we don't want to discriminate on the question of race or sex to be standard barriers for their rights to achieve an education.

I just thought I ought to say that and let you know that you have a right to your position but I hope in maintaining your position you keep in mind what some of our chief concerns are.

My big point is, is there a difference between a position that you take and as go into the whole question of infringements of religious freedom and that you, Mr. Demm, take in terms of calling for a need for restrictions of the scope of the H.R. 700. Is there a difference, are both of you agreeing, is your position essentially the same, is there a line of demarcation between the two of you?

Mr. **Yandle.** I don't think there is a basic difference fundamentally in what we believe in and what we stand for. I believe it could be one and the same thing.

I just personally I guess need some kind of assurances that our religious freedom will be protected and, as I stated earlier, we don't want Federal funds, we don't want State funds, the only thing our schools want is to be left alone and we do not have discrimination in our schools as far as race is concerned.

I can show you a disclaimer in our constitution right here, I can show you many, many black students, Indian students in our schools we have some black teachers in our schools, but on the other hand when we see things like this that came out from the quotas that were imposed upon us, tried to be imposed upon us, we just fear that sort of thing because it was utterly ridiculous racially, sexually, or anything else to demand that a church have 20 percent of its board of the minority race.

I can't understand anything like that. That is in print that a church must turn over its facilities for use by other nonprivate organizations within the community. Those things are not in our country, I wouldn't think, but I have—those documents—that is the kind of thing we fear, if that could be determined in that case, it could also be imposed here in this case and you are telling me that student loans, Pell grants, these type of things would trigger all over this and would not affect us if we did not have those students.

Is that the only thing that would trigger it or do we have to expect something later as these other paper tigers if you will that we have drawn up for you?

Mr. **Hayes.** I think the fear that you express, I don't think are inherent in H.R. 700 at all. As a matter of fact, some of the religious institutions administered federally sponsored programs in my area and they couldn't survive without it. I don't think there is any basis, I haven't seen a concrete basis for the fear you expressed.

Mr. **Edwards.** Mr. Gunderson.

Mr. **Gunderson.** Thank you, Mr. Chairman.

I am not, in the interest of time, going to pursue any questioning. I think you may have brought out something which specifically addresses the concerns of Mr. Yandle and Reverend Demme: The whole question of paperwork and reporting requirements.

If you look at Grove City there was no allegation of discrimination in this particular case. The concern is the reporting requirements. Our committee needs to look at this because it would seem to me, whether there be Government involvement or not, as long as there is the exclusion for particular religious beliefs such as women and the priesthood most religious schools would not, whether or not they have Federal funds, want to practice any kind of discrimination based on race, based on sex, based on handicap, or based on age. There shouldn't be a difference of goals here other than the concern about paperwork which you mentioned.

Thank you.

Mr. **Edwards.** I would only remind our two splendid witnesses, Mr. Yandle and Reverend Demm, that this subcommittee spent a lot of its time trying ot keep Government out of people's business and out of churches.

We feel that very strongly that you get the Government involved in religious activities or in religion and both Government and religion suffer and we are very, very supportive of the first amendment of the Constitution.

I might add, Mr. Yandle, that none of the horrible examples that you mention really have anything to do with this bill and everybody on this committee would be against practically everything that you suggested and we wouldn't let it happen.

I also want to point out that this bill does not establish whether or not student loans trigger Federal involvement. That is something that has already been established and this bill doesn't touch on it.

It does change the *Grove City* decision so that it is not a specialized penalty, but you have strong support in this subcommittee for separation of church and state, I assure you.

Mr. **Yandle**. We appreciate your position.

Mr. **Edwards**. If there are no further questions, we have business this afternoon, we thank the witnesses very, very much and we appreciate your coming today.

We will meet again after lunch.

[Whereupon, the subcommittee was recessed, to reconvene at 1:30 p.m.]

Mr. **Edwards**. The subcommittee will come to order.

We are going to begin our afternoon session now with regard to H.R. 700, the Civil Rights Restoration Act of 1985, and we welcome our first witness of the panel, Linda Lowe. Miss Lowe is with the Georgia Legal Services here in Atlanta. We will listen to all of the panelists and then the questions will come after they have all completed their testimony. Without objection, all of the statements will be made a part of the record in full.

STATEMENTS OF LINDA LOWE, GEORGIA LEGAL SERVICES, ATLANTA, GA; WILLIE MITCHELL, NEWNAN, GA; AND RIMS BARBER, CHILDREN'S DEFENSE FUND, JACKSON, MS

Ms. **Lowe**. Good afternoon. I am a health policy specialist with the Georgia Legal Services, and have been there for 6 years working with low-income clients who have problems with access to health care. I am also a member of the board of the American Civil Liberties Union of Georgia, so I am particularly interested in this kind of question.

We appreciate this opportunity to present our views in support of the Civil Rights Restoration Act of 1985. My client, Mr. Willie Mitchell, who is here at the table, is also going to be talking to you today about some specific experiences he has had with desegregation in fairly recent years at a private hospital in his community, as well as his experience with having his public hospital sold off to a forprofit entity.

I would like today to focus on the need to use civil rights enforcement to protect minorities' access to hospital care through the State health planning process. I think there are a lot of different things that we can say about civil rights and health care. We could talk about the difficulties of infants; I think this one issue is a critical one that bears some specific attention right now.

The trend toward increasing private control of hospital facilities in this country and specially in the South has frightening implications for access to care by minorities. I am not using the example of forprofit takeover of hospitals because forprofits invented the practices of discrimination, because they are the only one that practice them, but I do think that once a hospital is sold, once a public facility is sold off to a forprofit corporation, the community no longer has much ability to control what happens, it is kind of the end of the line in that community.

Between 1980 and 1984, 87 southern public hospitals—many of them public—were sold to forprofit concerns. It is well documented that low-income people are disproportionately likely to be minority and that they are disproportionately likely to have to rely on public hospitals, including their outpatient departments, for most of their care. Many physicians do not take medicaid and certainly do not take people who have no ability to pay, so public hospitals have become the real bases for care in the community.

In Georgia, 18 public hospitals have been transferred to private hands. The Georgia State Health Planning Agency, which is funded as you well know with Federal dollars pursuant to the National Health Planning and Resources Development Act to assure equal access to quality care at reasonable cost, has a big role in overseeing what happens with the health system in the State. For this reason we think that a lot of the civil rights enforcement needs to be focused on that agency, itself a recipient of Federal funds. As such it is subject to all the civil rights laws of this Nation.

We find that this agency in Georgia, and I am sure it is like this elsewhere, has been approving transactions that diminish access to care, having reason to know that those transactions will have that effect and doing it without regard to that.

When we and our clients have presented evidence supporting adverse impact, those data have been rejected by the agency as being speculative, while the project proposers' undocumented assertions concerning their future occupancy rates, revenue, and services have been accepted as completely valid.

The agency has approved not only hospital sales but also projects such as private hospital locations that can be predicted to have a negative impact on the remaining public services and cause those services to be reduced with the adverse impact on our clients. Namely, the proponents of these projects never say that their intention is to discriminate. They say that what they are about is providing services to people who can pay, which they believe they have a full right to do no matter what impact it has on anybody else, and that they are motivated by normal imperatives in business to make a profit.

But the discrimination is quickly seen; the effects are evident.

These entities, the forprofit corporations, like Hospital Corporation of America, Humana, AMI, Charter Medical, will say in public they believe because they are taxpaying entities they have a right to transfer people who cannot pay to the public hospitals, or at least whichever ones of those are left after their aggressive acquisition campaigns in the community.

The Center for Budget and Policy Priorities, as I am sure you are all aware, has estimated twice as many blacks than whites have fallen into poverty since 1980, that 40 percent of all black children and over a one-third of black elderly live in poverty. Obviously these are people who are going to be transferred from these facilities.

The disproportionate impact is clear. Our clients had high hopes for the kind of improvements in the health care access that might have resulted and had been promised by the National Health Planning and Resources Development Act, they worked as hard as anybody I know to try to make that act work, they filed a suit in 1977 against the Secretary of Health and Human Services to try to get the Secretary to enforce the regulations and the law that would require that the boards of health systems agencies at the local level be broadly representative of the community so minorities could have a say in what was going on, and also to ensure that the selection processes were open to everybody. The suit dragged on for years. Our clients worked on the 1979 amendments to the planning act and managed to achieve some of the objectives that they had for improving participation in the process. In fact, the health systems agency that serves Mr. Mitchell's area became much more responsive after its board's composition changed and recommended denial of the sale of Mr. Mitchell's hospital. Unfortunately, the State planning agency later approved the sale, and it is gone, it is now owned by Humana.

In 1983, when it became obvious that Congress had no intention of really enforcing the Federal requirements for the health planning agencies, Georgia amended its State certificate of need statute, and the bill amending that statute was written by Hospital Corp. of America. It was very clear to everybody that is what was going on.

There were a number of things that the bill did that advocate groups, civil rights groups, and consumer groups were able to modify to some extent. The original draft had shifted the burden of proof to the State from the applicant to show that an application met the review criteria or did not meet the review criteria. There was no mention in the bill of financial access to the facilities and no requirement that sales of public hospitals be reviewed. Some of those things got changed, but as a result of the changes in the law and the backing off of the Federal Government, our clients no longer have a right to participate in that process either through health systems agencies or through individual intervention.

We had a couple of lawsuits in court, both of which were rendered moot. One of them was the sale of Mr. Mitchell's hospital here. I think it is clear that we need civil rights enforcement in this area, that the States are not prepared to take care of people's civil rights alone, that we cannot afford to abdicate that responsibility to agencies that are much more responsive to the concerns of the entrepreneurs that want to make money off the health care system than they are about our clients.

Mr. Edwards. Well, thank you very much, Miss Lowe. We are going to have a lot of questions for you a little bit later.

[Information supplied by Linda Lowe follows:]

GEORGIA LEGAL SERVICES PROGRAM,
DOUGLASVILLE REGIONAL OFFICE,
Douglasville, GA, May 3, 1983.

Re: Georgia State Health Planning and Development Agency Georgia State Health Planning Review Board.

Ms. MARIE A. CHRETIEN,
Acting Regional Director, Office for Civil Rights, Department of Health and Human Services, Atlanta, GA.

DEAR MS. CHRETIEN: This letter is written on behalf of several female, minority, low income, and handicapped clients of Georgia Legal Services Program who reside in Newnan, Coweta County, Georgia. The purpose of this letter is to bring to the attention of the Secretary of Health and Human Services (Secretary) apparent violations by the Georgia State Health Planning and Development Agency (SHPDA), and the State Health Planning Review Board (Review Board) of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. More specifically, we wish to point out the failure of the Georgia SHPDA to properly collect, review, and analyze data and information concerning the needs of our clients for health care in Georgia, the failure of the SHPDA to require that applicants for Certificates of Need and/or Section 1122 approval provide data concerning access by our clients to health care facilities, and defects in the SHPDA's methods of administration which have the effect of discriminating against our clients. The violators are manifested by a persistent pattern and practice of actions and inaction which discriminate against persons protected under Title VI and Section 504. We refer herein to SHPDA's official and unofficial policies and practice, as well as to actions on project proposals which have occurred over the past few years, as evidence of the ongoing nature of the violations.

The Georgia SHPDA is the agency designated by the Secretary to perform CON/1122 reviews under the National Health Planning and Resources Development Act, (P.L. 93-641, as amended), 42 U.S.C. § 300k et seq. (the Act). The SHPDA is responsible for conduct planning activities in the State, including data collection and analysis, plan development, review and approval of the development of new health care facilities, and evaluation of the appropriateness of health care facilities in the state. These activities are frequently carried out in conjunction with one or more of the regional Health Systems Agency in Georgia. As a recipient of federal funds, the SHPDA is subject to Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.

FACTUAL BACKGROUND

Attorneys for Georgia Legal Services Program have represented low income, minority, and handicapped clients on several occasions during SHPDA's reviews of proposed health facility projects. We have consistently experienced a pattern and practice of failure by the SHPDA to consider, in its reviews of projects, the specific needs of our minority and handicapped clients. The SHPDA has consistently failed to gather meaningful data by which it can determine the needs of minority and handicapped citizens of Georgia. To the extent that it has any such data, it is never made a part of the record of the review of a project, so it is impossible to determine whether and how the data was considered during the review. Further, the SHPDA's application package fails to require data from an applicant concerning needs of or access by minority and handicapped citizens.

SPECIFIC PROJECT REVIEWS

Most recently, we represented a group of black, low-income, and handicapped residents of Newnan, Georgia, who opposed the acquisition by General Hospitals of Humana, Inc. (Humana), a private proprietary corporation of Coweta General Hospital, the public non-profit hospital in Newnan, Georgia. Our clients opposed the sale of the hospital because it (1) restricted access to the facility by low-income persons, who are predominately minorities and (2) resulted in enormous inflationary and unproductive increases in the amounts of Medicare and Medicaid reimbursements flowing to Humana.

The record of review in these proceedings documents that no specific consideration was given to the needs of minority citizens of the country. There is no date in the record from the SHPDA's files concerning racial breakdown of the population of Coweta County, nor was the applicant, Humana, required to provide any data concerning its plans to meet those needs or enhance accessibility by minorities. Furthermore, Humana indicated that, except in emergencies, its only method of admission to its services would be by private physician. Many of the minority residents of Coweta County do not have private physicians and therefore will not have access to this facility. Humana did not offer, and SHPDA did not require, the establishment of any alternative means of access. The maintenance of this sort of traditional admission policy perpetuates the problems that minorities have in obtaining needed health care.

One of the major objections by our clients to the sale concerned the "cap" on indigent care at $250,000, which is almost $100,000 less than the free care provided by the Coweta County Hospital Authority in 1981. After issuing its approval of the project, SHPDA did arrange a meeting among Coweta County officials. Humana executives and SHPDA staff, to explore alternatives to the access problem. The undersigned attended this meeting, but were not permitted to sit at the table or participate freely in the "discussion." Moreover, the SHPDA Director made it clear early in the meeting that while she hoped some compromise on the indigent care situation could be reached, she had no intention of withholding SHPDA's favorable § 1122 recommendation. Needless to say, Humana did not choose to modify its agreement.

Furthermore, the SHPDA and its Review Board have steadfastly opposed the efforts by our clients to obtain meaningful administrative review of the decision by the SHPDA to recommend 1122 reimbursement. Leaving aside the legal question of whether our clients are entitled under States law to invoke the state administrative appeal procedure for this decision, the Agency has persisted in its position that our clients are not "aggrieved" by project decisions. The adoption of such a posture particularly in the face of plain evidence that our clients will be harmed, by this sale in particular, constitutes a "method of administration" which has the effect of discriminating against minority citizens. This is prohibited by 45 C.F.R. § 80.3(b).

The SHPDA's and Review Board's actions on other project proposals have also violated Title VI and Section 504. These earlier actions were taken pursuant to the same procedures and criteria which were used in the Coweta General case and which are still being used. More specifically, the SHPDA approved a proposal by Charter Medical to close hospital facilities in downtown Macon, Georgia, and move them to a proposed new hospital in the affluent, white northern section of town. Both the SHPDA and the Review Board determined that the low-income minority women we represented in opposition to that proposal would not be aggrieved by it, despite direct evidence from the public hospital administrator that he would have to curtail services to the poor and minorities as paying patients, his financial base, moved to the new hospital. Moreover, we submitted evidence obtained from the SHPDA's own files but not theretofore in the record of review of the project, of the dismal statistics on service to Medicaid and indigent patients by the applicant's existing facility. Neither SHPDA nor the Review Board were moved.

As another example, the Review Board upheld the SHPDA's approval of the sale of Laurens Memorial Hospital, the public non-profit hospital in Dublin, Georgia to Hospital Corporation of America, Inc., even after the Board heard an HCA executive compare poor people in need of fine care to shoplifters. In addition, no specific review was conducted of the needs of minorities or the handicapped in Dublin, nor was any question raised about how the HCA-owned facility would meet those needs.

Finally, in the SHPDA's favorable findings on the proposal by Coliseum Park, a proprietary hospital in Macon, to expend its obstetrical services, the SHPDA Deputy Director wrote that Coliseum Park's extremely low black and Medicaid discharge statistics posed no problem since those persons had access to the Medical Center, the public non-profit facility in Macon. Even the Review Board ultimately determined that this "separate but equal" approach to access was unacceptable, although it nevertheless upheld the SHPDA's approval of the project.

These are only a few examples of the result of the SHPDA's use of criteria and procedures that violate Title VI and Section 504. Detailed below are more general complaints about SHPDA's ongoing policies and procedures which will continue to violate our clients' civil rights unless they are changed.

PLAN DEVELOPMENT

The first objective of the health planning process, as established by the priorities of the Act, is to increase access by the medically underserved. In Georgia, minorities tend to be underserved far more than other segments of the population. For example, only 84 blacks are admitted to hospitals for every 100 whites; for blacks men, the figures is only 79: 100. (This date is taken from SHPDA files; although the SHPDA has not used this information in any project reviews.)

An essential part of the planning process is data collection and analysis. The SHPDA should be collecting and analyzing data concerning health service utilization, health status, morbidity factors, and others, in such a way that it can determine the characteristics of the medically underserved and develop plans to meet their needs. The SHPDA has indeed collected data, but very little of it is broken down along racial lines, and there is virtually no information on the handicapped. For example, the portion of the plan which covers the medically indigent contains no data broken down by race, which would reflect the fact that minorities tend to have lower incomes than whites and also tend to be uninsured much more than whites. The failure to use racial data violates Title VI since it has the effect of perpetuating past discrimination and vestiges of segregation in the health care system in Georgia previously existing by virtue of law, policy, or custom. The SHPDA can in fact take no affirmative steps to increase access if it does not analyze present access, utilization, and health status problems for the minority and handicapped populations.

PROJECT REVIEWS

As described above, the SHPDA's review policies and criteria have the effect of discriminating on the basis of race. For example, there is no review standard or consideration in the SHPDA's rules which requires an inquiry into the performance of an applicant in meeting its Hill-Burton obligation or the existence of any Civil Rights complaints against the facility. There is no standard or consideration which reviews the extent to which the applicant offers a range of means of access to its services. Although the regulations indicate that need projections are to consider "characteristics of the population to be served", "referral patterns", and "patterns of utilization", in fact the SHPDA does not do so. Rule 272-2-.07(2)(f). The SHPDA does not require an applicant to submit utilization data by race. While the application contains a separate section on "Cost Containment Features", it contains almost nothing on accessibility. To the extent that non-discrimination assurances are sought, they are provided only in the usual conclusory non-discriminatory statement. There is no requirement that the facility explain its provisions for the handicapped, including vision-, hearing-, and mobility-impaired. In short, neither the criteria established by the agency nor the application format for CON/1122 provide for the review of data necessary to determine accessibility to a facility by minorities and the handicapped.

PUBLIC PARTICIPATION

State Regulations pertaining to the administration of the SHPDA contain no requirement that hearings or other public meetings be held at locations or times which are accessible to minorities. Scheduling such events in places which may not be accessible by public transportation, or which do not take into consideration geographical dispersion, particularly in rural areas, and at times which prevent or discourage attendance by working people, has the affect of precluding participation by minorities in project reviews.

Further, although SHPDA regulations indicate that any person may submit comments on project reviews, and that hearings held by local RSAs are to be tape recorded for use by the SHPDA, Rule 272-2-.06(4) (e) and (f), in fact the hearing tape is not made part of the record of the review, nor are comments submitted to the HSA always forwarded to the SHPDA. See, for example, *In re: Laurens Memorial Hospital,* Project No. GA23-81. This failure has the effect of precluding consideration of comments by persons who testify at a project review hearing but for some reason are unable to write their comments directly to the SHPDA. This, too, has a disproportionate adverse impact on minorities.

Finally, SHPDA staff have made several very revealing public statements concerning the approach the agency takes to applications. For instance, the Deputy Director, who is responsible for project reviews, has said, among other things, that cost containment, not access, is their first priority; that a facility has no obligation to have a minority discharge rate equal to the precentage of minorities in the community; that it is perfectly acceptable and expected that proprietary hospitals have different discharge statistics than public hospitals; that the agency has no standards by which to evaluate the numbers or percentage of Medicaid or indigent patients served by a facility; and that SHPDA need projections do *not* consider financial accessibility of a facility. Complainants submits that each of these statements violate Title VI, and that taken as a whole, they demonstrate a blatant disregard for the needs and rights of minority residents of Georgia. The undersigned will be happy to provide transcripts of these statements if desired.

ACTIONS REQUESTED

Based upon the foregoing, and the seriousness of the issues raised herein, we request that the Office of Civil Rights of the Department of Health and Human Services immediately take the following steps to address the ongoing violations of our clients' civil rights:

(1) Immediately direct the SHPDA not to conduct any future Certificate of Need or Section 1122 reviews until adequate data has been compiled from each applicant and analyzed by the SHPDA. The Office of Civil Rights should instruct the SHPDA upon finding of barriers to access by applicants, to either condition the Certifictes of Need on the removal of such barriers, or to deny the applications for Certificates of Need, and to recommend disapproval under Section 1122.

The data to be compiled and anlayzed by the SHPDA should include the following:

(a) Whether the applicant has any pre-admission requirements which might deter poor persons, and minority persons in particular, from gaining admission to the facility. For example, whether the hospital has any pre-admission deposit requirements or pre-admission medical insurance requirements, or requires admission by a private physician.

(b) Under what circumstances the facility transfers patients to other hospitals.

(c) Whether the facility has agreements with any other facility to accept only paying patients sent from that transferring facility.

(d) The number of patients treated during the preceding fiscal year at the facility.

(e) Of the total number the proportion who were Medicaid recipients.

(f) How this proportionate figure compares with the number of Medicaid recipients in the general population.

(g) Whether the hospital has a quota on Medicaid patients.

(h) Which doctors currently have staff privileges at the hospital.

(i) Of the number who have staff privileges, how many accept Medicaid patients regularly, and how many accept new Medicaid patients.

(j) How many Medicaid patients each doctor treated for each of the last three years, or what volume of Medicaid care they provided.

(k) Whether acceptance of Medicaid patients or percentage of practice made up of Medicaid patients has any affect on granting of staff privileges.

(l) Whether the hospital has a ranking system for doctors who have staff privileges.

(m) What criteria are used to place doctors within this priority system if there is one.

(n) Whether participation of the physician and the Medicaid program is a factor in establishing his/her priority.

(o) Whether and waht alternative means exist for admitting patients to the facility, other than personal physician.

(p) The Medicaid/Medicare cost reports for the two preceding fiscal years.

(q) The patients census according to race and by service for the past two fiscal years.

(r) Whether the facility has a Hill-Burton obligation or other requirement to provide uncompensated care and the extent to which the obligation is being met.

(s) If the facility operates an emergency room, whether it treats all patients in emergencies regardless of ability to pay.

(t) If the location or ownership status of the facility is being changed, require assurances and evidence that accessibility will not be diminished in any way.

(u) If the facility's service area includes a significant number of individuals with limited English proficiency, require evidence of arrangements for communication with those individuals.

(v) Require a description of the facility's arrangements for communicating with the hearing impaired.

(w) Require a description of the facility's arrangements for accommodations of the visually impaired.

(x) Require evidence of the facility's accommodations for the mobility impaired.

(2) Direct the SHPDA to immediately begin collecting and analyzing data concerning specific health problems and health service needs of minorities and the handicapped and to utilize that data during project reviews.

(3) Instruct the SHPDA to revise the State Health Plan and any other appropriate plan to reflect more accurately the needs of minority and handicapped persons for access to service in the state and to require that applicants for project approvals contribute meaningfully to meeting those needs.

Thank you for your cooperation and prompt attention to the matters raised in this letter. If you have any questions, please do not hesitate to call the undersigned. Please keep us apprised of the progress of your investigation and its ultimate resolution.

Sincerely,

PHYLLIS J. HOLMEN,
Attorney at Law.
LINDA LOWE,
Health Planner.

Mr. EDWARDS. The next member of the panel to testify is Mr. Willie Mitchell, of Newnan, GA.

Mr. Mitchell.

Mr. MITCHELL. Thank you, sir. I want to thank Miss Lowe because she is very good help, she has given hope and training to lots of low-income people throughout Georgia, and she is a very fine person.

First I want to talk a little bit with you about the Newnan Hospital and the so-called white hospital. Some call it the Newnan Hospital, some call it the white hospital. In 1925 this hospital was built in Newnan, GA, and at that time blacks were not allowed to be served in this institution, so they went on to Stringstreth, which was a mile over, and built another hospital with about 10 or 12 beds for the black folks. In other words, a colored hospital. From that time, I mean after they built this hospital they did not have any facilities to serve people that had serious disease or had to have serious operations, so what they would do, they would take them from that hospital over in the ambulance, if they had an operation, over to the white hospital, and operate on them and bring them back to the colored hospital. So this went on for several years, until Newnan decided to build this hospital.

After building the hospital it was a segregated hospital for quite a number of years. It was segregated; blacks were allowed on one floor in that hospital, not in the front, not upstairs, they could not come in the front, they had to go in the back. That was the Hill-Burton hospital. So, this Newnan hospital, after not serving blacks since 1925, was in Washington testifying before Senator Kennedy's committee holding a hearing on SHA guidelines, and I find out Newnan hospital was using money from CHAMPUS, CHAMPUS money. So we went back to Newnan, we got together, and we decided that we wanted to meet with the hospital officials to address what we had found out. They would not meet with us. So, we formed ourselves and organized under the Martin Luther King movement which in fact Tyrone Brooks came, and we protested, started a protest. That was not helping us too much.

We decided we would come to HEW. We had to come to HEW three times before we got them to move on it. Many thought it would hinder them from getting into it because CHAMPUS was the one furnishing the money. What they did get, it was CHAMPUS, CHAMPUS came down and met with us and also HEW and we met with them three times, then HEW decided to get into it after CHAMPUS gave them the go-ahead and told them, they got into investigating the hospital.

OK, at that time, we were still protesting. There was embalming fluid, everything was put on the streets where we walked, it made us sick. We still walked. It made us sick. Firemen came out and tried to wash it up. The police got sick. So, HEW finally got Newnan Hospital to negotiate with them and got them to accept the affirmative action plan, and then after sending the affirmative action plan, HEW still kept tabs on it; they would come back every so often to see how they are doing.

At that time, the only blacks they had in there were a housekeeper, laundry workers, and janitors. They were the only blacks they had in there. No black nurses, no black doctors on the staff, no black RN, no black LPN, no black people in the hospital. So after accepting an affirmative action plan they had a cafeteria which had a partition between for blacks and white. The first thing they did they eliminated the wall between the blacks and whites, so everybody could have the same dining rooms. Then they began to hire, they hired black LPN, black nurses, and they put two black doctors on the staff down there and then began to take patients in, and since that time, this hospital you may not believe it is becoming one of the No. 1 health care facilities in the State of Georgia. It has moved from—it has done a lot of good things. It has given people a lot of jobs. They have a black social worker there, they have black people in the personnel part, they have black supervisors, they have black RN's, they have black LPNs.

When you are a patient—I was a patient in there—I went in there to see how a patient was treated. I was treated with the most kindness, and I am one that was having problems with them, and I did not have any problems whatsoever.

Civil rights—civil rights and help of HEW helped to get this hospital to wait on people that were sick, regardless of race, creed, or color.

Let me remind you before they started doing that they did not take Medicare or Medicaid, from the poor. The rich person was on Medicare or Medicaid—Medicare, on Medicare, to go out to the hospital, stay as long as they want, then they would pay their bill and get reimbursed from the Medicare Program. But if the poor person went there he may stay 1 day, he can be white, but a black person did not get to go there. I am talking about a white person. A poor white person on Medicare, he stayed 1 day, he was shipped out, too.

On the other hand, to show you how serious this was for health care, they had a patient, had a person by the name of Maud Smith, this is just one. She worked there 18 years, she had a major heart attack at this hospital, they threw her in the car and carried her 1½ miles away, she had another heart attack, they throwed her in another car and carried her a mile away, she had another heart attack, the ambulance was there this time and put her in the ambulance and carried her back. Then she got out they let her go after 18 years' service, they did not give her anything, I think $400 or $500 is all she got.

There was another patient by the name of Charley Wells, worked there about 20 years, the same thing happened to him, he got hurt there, he was carried away from that hospital.

We had a lady from Atlanta who had a wreck, worked for the State. The ambulance picked her up, carried her to Newnan Hospital, they would not serve her, sent her to County General, she was hurt. That is 1½ miles away. They pick up people that were hurt during that time, rolled by the hospital, and going 1½ miles to another hospital, which a person could have died. That is how serious that was, and turned around unbelievably. Because of the civil rights and work of HEW, anybody under pressure, because we stayed right on them, we were in the office every day until something was done about it, so they went to work. This is why civil rights is needed in this part of the country, because the States cannot handle it at the present time. They bought a hospital for about $12 million which was worth $25 million. OK, at the present time, they are turning the people away. The county commission told me just the other day they put $¾ million in that, but the money is eaten up so fast with the high expenses when people go there, some of them have been brought to my attention, they have been turned away from this facility.

Now, it was very important for us to try to stop the sale of that hospital, which we did, but to no avail. We did not have any luck stopping the sale of that hospital. We need that hospital. We have people there that do not have insurance, people that are sick, elderly, and they need, we have two private hospitals down there, we do not need two private hospitals, we need a public facility which is there to help take care of your sick and disabled people.

I am an example of poor health care. In 1936 I got my hip broke. I did not know it was broke. My mother carried me to a doctor, a black doctor and a white doctor. They said that my hip was out of place, so they pulled, did not put it in a cast or anything. It was 2 years before I ever walked a step. I stayed on crutches 2 years. The doctor kept telling my mother I was putting on and did not want to work in the fields. So when I went in the service, they took me in the Army—when I went in the Army, I had a little slight limp. After going through drills and so forth and the stuff I had to go through, my leg started giving me trouble. They put me in the hospital, so when they x-rayed they found out that this bone from my hip to my knee was broke and knitted back up like this, broke in two and knitted up like that, and to date I have this problem. They have slipped, they grind up, my hip joints are deteriorating, I have arthritis. I got out of the service with a medical discharge, aggravation of my condition and so forth. They paid me for 3 years and cut me off. I do not get a dime for my aggravation of the condition in the service. I was cut off here in the State of Georgia. When they called me for evaluation I was cut off.

Now, I have tried over and over to get my disability on this, but they would not give it to me because some of my civil rights were taken away from me back in the thirties. In fact I never did have any. When I was born, as far as that goes, all was taken away from me. I had no role or no way that I could fight to try to get these things, and I tried every way, I tried to do what I tried to ao to get my rights. I was blocked. So civil rights is important to me, because

I am a living witness of health care. I know what it is about when you cannot get it.

Thank you.

Mr. EDWARDS. Thank you, Mr. Mitchell.

Mr. EDWARDS. The third member of the panel to testify is Mr. Rims Barber, representing the Children's Defense Fund in Jackson, MS.

Mr. BARBER. Thank you, Mr. Chairman. I have furnished you with a copy of my written testimony, and I will speak extemporaneously.

Mr. EDWARDS. It will be made a part of the record.

Mr. BARBER. Thank you.

I wish to speak to you today about health care, about access to health care, particularly for childbirth, as this is extremely important that we have children get born into this world in the appropriate health care facility with the appropriate services. The cost of not doing that is discriminatory.

I am in Mississippi. In Mississippi, we are an unusual State, I guess, probably the only State in which more than half the childbirths are black. More than half of the black childbirths are born to people in poverty. Almost half the black childbirths are covered by Medicaid. And more than half the hospital days in all the hospitals in the State are federally covered by either Medicaid or Medicare, so that there is a high dependence on Federal funds of one sort or another to even have a health care system in Mississippi.

But we have problems. We have I guess first off I would say the good stuff, we have come a long way in the last 2 years since some of us have been working on these things. We have reduced maternity mortality, infant mortality, we are much healthier, we have come a long way, and that has been thanks to the Federal programs such as Medicaid, and to enforcement of the Civil Rights Act of 1964.

Without those Federal initiatives we would still be in the kind of condition that Mr. Mitchell was describing about Newnan with segregated hospitals, the ones that will not take you at all.

We still have problems. We have got people who are driving 1½ hours or more in labor to get to a hospital that will take them to deliver their child. Now, I have never experienced that and neither have any of you gentlemen—but just knowing what I do as a father of four children, I got a feeling that is not a good way to start life is to head down the road looking for a hospital that will take you when you are in labor, that there is a better way to do it, that there are hospitals in the community quite often that our taxes paid for them in the first place that just will not take people. Quite often I find people who drive past a really nice hospital with a good staff, high-quality equipment, on down the road for an hour or so, to a shabby hospital, that is ill-equipped and poorly staffed. They did not do that because they like driving down the road. They did that because they could not get in the hospital that would have served them better.

We are jeopardizing the lives of people because of this. It is not like it used to be, there is no sign out saying whites only, or something else to that effect. I have not seen one of those in 4 or 5 years. That is not an awful long time. But I really have not seen one in that long. We stopped the last one I saw.

But there are other ways and we are getting more sophisticated I am afraid in how to juggle things to keep people from getting adequate care.

The chief of staff of the hospital will not take you because he just does not take Medicaid, or at least not as a normal practice. And the hospital says that is not my fault, that is his fault, but they still keep him as chief of staff.

Now, it is that kind of thing. I hear people saying well, it is the ambulance drivers, they always take all the colored patients over there and all the white patients there, it must be the ambulance drivers' fault—I have heard people say it is historic practice that people like to give birth in Jackson, even though that may be a 2-hour drive—that is why black people drive to Jackson. We go through a lot of rigmarole, and I am concerned about the application of the *Grove City* case to the hospital area because it just seems to create another giant loophole for people to mess around with.

They can create more strange policies that shift the blame onto some other components of that hospital so it was not the man in the emergency room that really turned you down, he is a hospital employee—that would have been wrong, obviously. It was somebody else down the hall or upstairs or out in the private physician's office who gets the blame shifted to them. We have seen a lot of policies come up that really are discriminatory against Medicaid and black patients, and people just not being able to get good health care, therefore, and if we have got—if we do not pass this H.R. 700, we will have a problem in that they can say well, the Federal money only went to our cancer treatment unit, not to our childbirth unit, and would they get away with it then of not having to take care of people in need of childbirth services?

They are in the health care business. When they come in for anything else, they are an institution. When they apply for a certificate of need which Miss Lowe was speaking about, they come as an institution. When they get licensed, they get licensed as a single hospital. They accept a Federal grant or a loan for equipment, the check is made out in the name of the hospital. They get Medicaid and Medicare in the name of the hospital. It is only when it comes to equal access and questions like that that they begin passing the buck saying no, it was not me, it was that other department, and that does not count. Somehow that does not count under an application of the *Grove City* rules. That scares me to death.

Therefore, we strongly feel that you ought to report out H.R. 700, get it up there quick enough onto the agenda so it has a chance of getting through this time around—does not get caught in the last-minute rush.

I thank you.

[Prepared statement of Rims Barber follows:]

PREPARED STATEMENT OF RIMS BARBER, DIRECTOR, MISSISSIPPI PROJECT, CHILDREN'S DEFENSE FUND

I am Rims Barber, Director of the Mississippi Project for the Children's Defense Fund. I have twenty years of experience with civil rights activities in Mississippi, beginning with the early efforts to desegregate our schools, hospitals and other facilities and maintaining efforts to improve the programs in our state so that all have equal opportunity in the areas of health, education and welfare.

I am here today to speak in favor of the proposed Civil Rights Act of 1985, to restore the federal legal commitment to civil rights to the status prior to the Supreme Court decision in *Grove City*. In my long experience, I have seen ingenious efforts to use various loopholes to avoid desegregation and equal access. The *Grove City* decision creates a giant loophole that would allow institutions to avoid any serious commitment to equal access and opportunity for citizens of this nation. The closing of this loophole is a priority, to send a signal to all who would discriminate based on race, sex or handicp.

My remarks today will focus on a very basic function in life, being born. As a part of our project we have been deeply concerned with the ability of all our citizens to gain access to health care, with a particular emphasis on childbirth. Without access to appropriate care, children risk being brought into this world with little chance to survive or with little chance to grow normally to a productive adulthood. The human costs of inappropriate childbirth are staggering.

First, one must observe that we have made great strides in Mississippi over the last twenty years. While then half the Black babies were born at home, now hospital care is available and 97% are born in some hospital. As a result our maternal death rate has been cut by two-thirds and our infant mortality in half. Poor and Black people have a greater chance of a healthy childbirth.

This significant improvement is largely the result of federal initiatives through the provision of Medicaid and the enforcement of Title VI. About one-fourth of all babies born in Mississippi have their costs paid for by Medicaid, and thousands no longer fear being turned away from hospitals merely because of the color of their skin. The carrot of medicaid dollars and the stick of civil rights sanctions have made a difference in institutional access for the poor and Black. To continue to improve our status, we need both the carrot and the stick, adequate funding and strict enforcement.

In our concern to improve appropriate childbirth care for all we conducted an investigation into hospital practices. We found numerous instances of patients traveling one to two hours to deliver, of patients traveling past well-staffed and well-equipped hospitals to far-distant hospitals that are not well-staffed or equipped, of people being advised not to seek entrance into the hospital that their taxes helped pay for in their community and to drive in labor down long lonely roads to a hospital that will admit them. At the other end of the spectrum, we found hospitals with generous admission policies becoming dumping grounds for poor and Black patients, overcrowded and strained to provide quality care. This distortion of normal patterns was seen for two overlapping groups, medicaid recipients and Blacks (Medicaid pregnant women are 85% Black).

The distortion of normal patient origin patterns is not caused by medical necessity, but by practices that place barriers to the admission of patients based on race and payment mechanism. In our studies of patient origin and utilization in the hospitals of our state, we find that most hospitals have reasonable access for all people, and that Blacks and medicaid recipients use them in roughly equal percentages as do those who are White and well insured. However, we still find some hospitals where there are disproportionate numbers of Blacks and medicaid patients who are unable to gain access to the facilities. The patients we would normally expect to be served by these hospitals are dumped on a few hospitals which then become de facto facilities for the poor, suffering from overcrowding and a lessening of quality of care.

There are no signs up in front of these hospitals saying "Whites only or "Cash Only." Those days are gone. It has been four or five years since I last saw clearly marked segregated facilities in a health care institution.

Today racism is more subtle. Health care providers limit their Black patient load through cost mechanisms or by the amount of Medicaid they take. In the hospital, the emergency Room people say that they take everyone, but some never come back after being sent to the finance office. The finance office says that they don't really make decisions to turn away patients, it must be upstairs. On the floor they say that hospitals don't admit patients, doctors do, so go talk to the doctors. I have even been told that Blacks prefer to drive long distances to give birth, that it is a historical preference not a hospital practice that leaves some wards nearly all white. Some doctors are now saying that the hospitals are looking hard at their pattern of practice to see if they are "profitable" for the hospital, and that they are discouraged from admitting "unprofitable patients", meaning mainly those for whom reimbursement is less than cost (i.e. Medicaid) and those who cannot pay. The result is that the system in these hospitals begins to restructure its clientele, and Blacks learn that it is better to try elsewhere if they really need care. Few want to frontally challenge this when they are in a crisis of health.

They pass the buck among the departments within the hospital and among the health care professionals so that it is difficult to tell exactly who made the decision to create the barriers based on race and ability to pay. The *Grove City* decision makes it easier to pass the buck so that no one is responsible for equity. When they apply for a Certificate of Need, they come as a single institution. They are licensed as a single entity. They accept federal grants or loans as an institution. They are glad to accept checks from Medicare or Medicaid in the name of the hospital. It is only when it comes to equal access that they try to become disparate parts. This dodging of responsibility can only be stopped by passing the Civil Right Act of 1985. Then we can be about the business of guaranteeing equal access to health care, to childbirth in the appropriate setting.

SELECTED COUNTIES AND HOSPITALS IN MISSISSIPPI: CHILDBIRTH STATISTICS

County	Hospital	White	Black	Medicaid
Percent of all county (of residence) births born in local hospitals and percent of all births at hospitals paid by medicaid				
Attala	Mont. Jones	68.7	28.2	0
Lauderdale	J. Anderson	53.6	7.5	.3
	Rush	24.6	9.4	.3
Lowndes [1]	Golden Triangle	67.7	37.9	4
Monroe	Gilmore	77.8	41.9	4
Hinds	Hinds County	23.2	8.7	12
Jones	Jones County	65.8	44.9	11
Warren	Vicksburg	27.0	11.5	0
	Mercy	44.7	14.8	3
Selected "normal" pattern counties and hospitals				
Coahoma	Northwest	87.8	75.5	41
Forrest	Forrest County	95.1	94.4	17
Grenada	Grenada County	83.5	94.4	26
Lafayette	Oxford	78.8	73.8	15
Lee	North Miss.	92.3	99.3	12
Pike	Southwest	87.0	88.2	27
Union	Union County	70.3	86.1	16
Webster	Webster County	55.0	56.2	30
Winston	Winston County	61.7	60.7	61

[1] Counts only non-Air Force base childbirths for Lowndes County.

Mr. Edwards. Thank you, Mr. Barber.

You three witnesses have brought up a new subject to us.

Mr. Mitchell. For the record, I have got something I want to give you for the record. We started on this hospital in 1978, trying to get the doors open for whites and blacks to enter this hospital, and in 1979, when they started the desegregation plan. Now HEW in Atlanta has a copy of their investigation; if you need one you can get one from them.

Mr. Edwards. Do you have it?

Mr. Mitchell. No, I do not have it; I thought I had it. HEW has a copy of it here in Atlanta.

Mr. Edwards. Fine; thank you.

Mr. Conyers.

Mr. Conyers. Thank you. I do not have any questions, but I am glad that this testimony was brought into the record. I am going to discuss this matter with the members of the Education and Labor Committee, and hope that we can look into it. I think it deserves a hearing really in its own right. I do not have to ask you what has been happening on the civil rights front down here, I would be afraid to, because you have already given us more than enough for the record. But please know that we are not oblivious to some of the newer tactics. We do realize we have a long way to go, and there is only two things that I can say. First, you have friends in Washington. It is not as bad as it may sometimes sound or seem. And, second, you must remember, as I have to remind myself, that there is nothing written anywhere that the civil rights struggle must be one continuous improving, increasing amount of success every year. We go forward, we slip backward, new tactics are brought forward, we move again, new counterefforts are brought, and we may slide backwards and we keep moving along, and we appreciate that you keep us advised as to what the new tactics to slow us down are, and I think that your testimony here about health delivery services really warrant some much closer investigation in this committee. We are jointly made up of both Judiciary and Education and Labor. So I commend you for your testimony, each of you.

Mr. **Edwards**. Thank you.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. No questions.

Mr. **Edwards**. Mr. Gunderson.

Mr. **Gunderson**. Thank you, Mr. Chairman. I do not have any questions, either, but to echo what Mr. Conyers said, in all the testimony I have heard this far you are the first one who has come at this from the angle of health care. It has been helpful and beneficial.

Mr. **Edwards**. Have you filed any lawsuits on this?

Ms. **Lowe**. I wanted to say one thing I did not get to. It was time to stop—that was, we had filed a complaint against the State health planning agency under title VI and also under section 504. You know we complained about everything from the date of the process at the State health planning agency and the fact they were not gathering data on need by minority and applying it in their process, to the fact they were excluding the public from their process of review. The Office for Civil Rights has said our complaints have made out a prima facie case of civil rights against the agency, and they are working with the agency on a compliance plan. We also have a new director of the agency who I think is pretty sensitive to many of those issues, so we are trying to work with her. It has been a long struggle, and I think that the agency is laboring under some laws, State laws and State regulations, that might be different if there were better enforcement at the Federal level both of the civil rights laws and of the Health Planning Act and regulations that were adopted.

Mr. **Edwards**. Well, this is a very serious matter, and I am sure that if Mr. Barber or Miss Lowe would get in touch with us and the Education and Labor Committee we might be able to push the process along. You might be losing some babies in a 2-hour drive; it is outrageous.

Mr. **Barber**. I could sit and give you a horror story. I could tell you the ones that died on the route.

Mr. **Edwards**. Humana Hospital made $170 million last year. They ought to be able to take some people that do not pay quite as much as they would like. Charity is going into heart transplants.

Ms. **Lowe**. Can we say you said that? We have been suggesting something along those lines for a long time.

Mr. **Edwards**. I do suggest something as specific as this, that you could get in touch with our committee and with your committee and we can move the process along. The bureaucracy moves sometimes like the mountain.

Mr. **Mitchell**. Since no one has a question to ask me, I want to ask this committee a question.

Mr. **Edwards**. We are unanimous on everything.

Mr. **Mitchell**. Fine; does it not concern this committee, Humana buying up hospitals in this country, a private firm, moneymaking firm, does this concern you all? All the hospitals, are they allowed to buy up public hospitals, buying up hospitals worth $25 million for $12 million? This is the concern I have. I just cannot understand that a company like Humana can step in and buy hospitals that people paid for.

Mr. **Edwards**. I am sure it bothers all Americans because health care should be like the air you breathe and clean water, people should be entitled to it whether they can pay for it or not. Now the profit motive is something that we all respect. That is the kind of society we have. But Government does have an immense responsibility here, and it is like turning over the prisons to private enterprise, it sounds good but they better do a good job or Government ought to be there looking over their shoulder the entire time. Incidentally, I am reminded that Congressman Waxman's subcommittee of Energy and Commerce is looking into this, and in the meantime if you want to write to us we will try to help out too.

Mr. **Mitchell**. What I was saying to you was this. We do not have any recourse whatsoever when these hospitals are sold. It needs something to say to the county commission, that taxpayers in this county must have some kind of hearing before these hospitals can be sold to Humana or any other big company that wants to buy them for moneymaking profit business, because we as poor people, we as citizens who pay for these hospitals do not have anything to say.

Mr. **Conyers**. We read you loud and clear, and I assure you that at least two committees, maybe three, will be investigating this part of our hearing here this afternoon. Thank you.

Mr. **Edwards**. Thank you very much.

Mr. **Edwards**. Will the next panel come to the table? The next panel is going to consist of Patricia Johnson, assistant to the commissioner, Georgia Department of Human Services; Ayres Gardner, Esq., Atlanta Legal Aid Society; Mrs. Addie Powell, Augusta, GA; and Mary Ann Oakley, Esq., of Atlanta, GA. The first witness to testify will be Ayres Gardner, who represents the Georgia Legal Services Corporation, I presume of Atlanta. We welcome you and you may proceed.

STATEMENTS OF AYRES GARDNER, GEORGIA LEGAL SERVICES PROGRAM; MARY ANN B. OAKLEY, ESQ., ATLANTA, GA; ADDIE SCOTT POWELL, BETHLEHEM AREA COMMUNITY ASSOCIATION, AUGUSTA, GA

Ms. **Gardner**. Thank you. I think you have a copy of my testimony but——

Mr. **Edwards**. Without objection, all of the testimony will be made a part of the record.

Ms. **Gardner**. Rather than burden you with reading that, let me talk a little bit about what I have written for you today.

I think on your schedule I was originally listed as being an attorney of the Atlanta Legal Aid. I think it is important to know I don't work for the Legal Aid but rather for the Georgia Legal Services Program.

Mr. **Edwards**. Is that a State program?

Ms. **Gardner**. It is a statewide program, no way affiliated with the State of Georgia. We are a nonprofit corporation which is a grantee of the Legal Services Corporation. We handle the entire State of Georgia outside the five-county metropolitan area. That means we have 18 offices around the State.

Georgia is the largest State east of the Mississippi. It is a very broad area that we serve and most of it rural.

I am a housing specialist attorney and I have been since 1980. To be quite frank with you, I don't think that the *Grove City* decision is as devastating to the title 6 enforcement in my area as it is in many of the other areas that you have heard about and are going to hear about from other people. But Mrs. Powell and I are here because we have an enormous concern about title 6 enforcement in our area.

It is my understanding and belief that there are many Members of the Congress who simply are unaware so far of the hideous degree to which our part of the country still suffers from racial segregation in housing. I deal not entirely but almost entirely with federally subsidized housing projects, people who want to get into that housing, and people who already live there.

In the written testimony that I have given you, I have described some housing authorities that I have been to and seen. Since I have statewide responsibilities, I have traveled around a lot in rural Georgia and some of the cities here. There are some glaring examples and that is why I gave them to you. One is Adel, GA, which is a very small town in south Georgia. The whole housing authority of the city of Adel only has two projects. One is white and one is black. The white project I will tell you quite frankly isn't in good shape. You probably wouldn't want to live there. But for people in the rural community, where there isn't any other rental housing that is remotely standard, it is a very good alternative.

That white project is in a white residential neighborhood filled with houses, quiet, small-town streets. It is within walking distance of the business district of the town. It is surrounded by nice houses.

The black project, on the other hand, is in the black neighborhood of Adel, which is filled with shotgun houses and dirt roads. There aren't any paved streets or a little asphalt that has been thrown down here and there. The black project is at the end of one of those dirt roads. It sits within as far as from me to the curtain behind you, which I am not good at estimating distance in feet, so you can figure out for yourself, that far from a sawmill. There are children there, old people there. There are broken windows there. It is a hideous, disgusting place to have to live, but the only alternative for people who can't afford the substandard rental housing that is available to black people in that community.

There has never been a black tenant that we are aware of in the white project. And there has absolutely never been a white tenant in the black project.

I don't know where HUD has been in Adel.

In McRae, GA, there are two projects, again. McRae is in middle Georgia, somewhat southeast of Macon, if that means anything to you.

Two projects: One is a project of about 47 units. It is beautiful. The brick buildings are so new you can still see the white mortaring between the bricks. Park, well landscaped, lots of open spaces for children to play. Department of Family and Children Services, which means welfare and food stamps and other services that the State provides to people who are in need, is within easy walking distance.

Again, it is in a white residential neighborhood, surrounded by nice houses. It is a very pleasant place to live. Many people would be very happy to live there.

The other project is entirely black. There are some black families who live in the first project I described. It is not fully segregated. But the other project is illustrative, I think, of the problem that we have.

When projects in Georgia have been forced to integrate, when HUD has leaned on them at all, some black families, usually a few pioneers, sometimes more than that, will be admitted into what was formerly an all-white project. But the black project stays that way. The conditions that go on there which are horrible stay that way because no white family with a choice, and they always get a choice, would ever live under those circumstances.

In McRae, Ellison Village has 22 units on a dirt road. Across the dirt it is horrible. There are two buildings, as I recall, that are old concrete block, two-story structures that are in horrible, horrible disrepair. Some of my clients have had sewage leaking down from an upstairs apartment into their apartments on the first floor.

It is situated on a dirt road. There is basically no grass around the buildings. It won't grow there. It faces the railroad tracks and across the railroad tracks they have a wonderful view of the city jail. It is at least 2 or 3 miles from the department of family and children services. It is 2 or 3 miles from the office of housing authority where people have to walk. There is no bus service in McRae.

That is never going to change until that project is integrated or until a new one is built there. Those two places are illustrative of problems that we have, and we haven't seen any indication until recently that HUD is serious about title VI enforcement. There are individuals in HUD who are very serious about it but they have never had the manpower or womenpower.

If they do an investigation and they find discrimination they enter into a written compliance agreement with the authority and they go away. It is unreasonable to believe that the very people who have maintained a dual segregated system housing authority will now in good faith, in all honesty, comply with the compliance agreement that they have signed.

Most recently, with other legal services' lawyers, I represented a group of tenents in Johnson County in Wrightsville, GA, which some of you may know a little bit about. It had a history of civil rights struggles.

In Wrightsville, all the projects but one, there are six, were totally segregated. The one was an elderly project, and the executive director of it put all the white people at one end and all the blacks at the other. Effectively she kept it segregated. When we questioned her about a particular project, a newer one that was 100 percent black, she said:

Well, I am trying to do what I am required to do by my compliance agreement. I asked people—I try to put whites in there—but if they tell me, give me an excuse other than race, I can't put them back in the bottom of the list.

We said, what do you mean? If the man says to me: No, I don't want to live with the blacks, but says, I don't want my wife there alone all day; that is not race, that is enough.

Of course, we all know none of you are stupid, I don't think she is either. That kind of subterfuge can go on, and they get away with it because there hasn't been any real effort to enforce title VI in the area of housing.

I am very concerned about what has happened to the bill that these two committees are considering, because the message is already getting through down here. That the days of civil rights enforcement are going away; and don't think that failure to do something about the *Grove City* decision will be taken as no message at all.

It will be a signal that local control—which is our dedicated version of States rights—is here in full force. And they can do what they want to do, and what they want to do is what they have already been doing, and that is running segregated federally subsidized housing.

Mr. **Edwards.** Patricia Johnson, assistant to the commissioner of the Georgia Department of Human Services.

Ms. Johnson.

STATEMENT OF PATRICIA JOHNSON

Ms. **Johnson.** Thank you very much, and may I add a word of welcome to the committee and especially my appreciation for the time that you are vesting in looking at this whole question of enforcement of title VI.

And special greeting to John Conyers, since I am from Detroit, MI. It is a pleasure to see him.

I have a difficult responsibility of talking about enforcement of title VI, as we look at the delivery of social services in undiscriminatory manner in the State of Georgia.

First of all, the association services' population, when we look at the benefit side in particular, food stamps and AFDC, for the most part that is a black client population in the State of Georgia. So, the withholding of those benefits would probably have dramatic impact on the keeping of staff and providing the wherewithal to run and manage an agency.

But I want to point out that having been the State director, serving as State director, for almost 9 years, from 1975, in December, until April of last year; it is important to call to your attention the fact that when I came on board as State director of family and children services, we had many local departments of family and children services offices where they never had a black employee. They had no minority staff at all in the history of those agenices.

So, I want to put this before you because there were several things that we had to address simultaneously. We had to address, certainly, the inclusion of black staff, to increase black hirings, across the board, for all of our counties. When I came as State director there were 159 counties in the State of Georgia. There had never been a black director of a local county welfare office. We did see that change, not to a significant degree, but this was all very important to the question of title VI.

We did a great deal in the way of cross-cultural training as we attempted to add more blacks to the staff. I think we were able to move, over a period of 9 years, to ensure that there was black representation on the staff throughout local welfare departments within the State of Georgia.

So it becomes very difficult to sort out where title VI entered into and impacted some of the charges that you are interested in knowing about today. And where some of the other multifaceted activities that we carry on in the interest of a cross-cultural staff representation would indeed be the experience of all or our local welfare agencies.

I heard from clients, over the last 3 or 4 years in particular, before I left the division of family and childrens services, that their treatment in local offices had improved. Now, that certainly was not across the board, because we were still getting complaints from clients that they were treated discourteously, that they were treated in a manner that was considerably less than the kind of fair treatment that should be expected of any social service agency.

We did not, at any time, experience any threat of withdrawal of funds. There were a number of compliance hearings and reviews, and the effort to work closely with the regional four offices to determine that we were indeed living up to the letter of the law. But never, at any time, over the 9-year period that I served as State director, did we experience any threat of withdrawal of funds.

I think a great deal of what we did grew out of an interest and a commitment that was representative of the new leadership that the department experienced beginning in 1975, and I hope that that is continuing.

I would be delighted to entertain questions at some later point.

Mr. **Edwards**. Ms. Addie Powell of Augusta, GA. Ms. Powell, you are welcome.

Ms. POWELL. Thank you. I consider it a pleasure to be able to address you with a very keen problem that we in the South have in the spending of Federal funds.

Just to refresh ourselves, I will read from my quote: "No person in the United States shall, on the grounds of race, color, or national origin, be denied the benefit of, or be subject to discrimination under any program or activity receiving Federal financial assistance." So reads title VI, created July 2, 1964.

Ten years later, in 1974, by act of Congress, the Community Development Block Grant Program was created in direct answer to the needs of decaying urban communities within hard-core poverty areas.

Block grants have been awarded on the basis of levels of poverty to financially assist in the elimination of blignt. Placed under the Department of Housing and Urban Development, the act stated not only the purpose for which the money should be used, but how this use could best achieve the elimination of blight through the Housing Assistance Plan for the cities involved; Economic Development Program; Citizens Participation Plan to involve the hard-core poor in finding solutions to its proverty.

Though delegated, the responsibility for administering the program, the power to enforce or even support this protective covenant under title VI was abandoned in favor of supreme dominion of each sovereign municipality to interpret, alter, or adjust guidelines at its own discretion.

In entitlements as Augusta's, municipalities have exhibited the expenditure of Federal funding with the same procedures used in resistance to civil rights that was historically characteristic prior to 1960. The results of this has been a laissez-faire policy in the administration of funds.

Since 1974 when CDBG began, Augusta has received over $20 million in the name of its poverty, 90 percent of which live within the black inner city.

Ten years later in 1984, low-income communities remain relatively unchanged. It has gerrymandered lines in defining targeted areas to avoid direct relief to its hard-core, predominantly black, poverty areas. It has expended millions of dollars in sewer separation programs, but blighted conditions, poor drainage, and antiquated systems within the black inner city remain unchanged.

It has expended thousands of dollars annually in facade restoration of old buildings in the downtown business district that are owned by affluent whites. For the inner city, several buckets of paint were allocated without a painter, but with short deadlines for either their consumption or repossession.

It has set up a rehabilitation program in the black community that has favored demolition over rehabilitaiton. In Bethlehem alone over 400 homes have been demolished that could have been rehabilitated. Families and friends have been scattered throughout the county, diluting the voting strength of the black minority and leaving in its wake, barren land to accumulate rubbish and overgrowth to breed reptiles, rodents, and insects.

It has installed an excessive amount of street lights in the downtown communities and business district. In the black communities street lights have been installed on one side of the street, while the opposite side remains in hazardous shadows and darkness.

The city has not developed an economic program for its blighted communities, but has expended over $120,000 in American city studies, to explore and develop the downtown business district—$624,000 in emergency job funding was sent to Augusta. But there are no jobs for black minorities. Furthermore, we have yet to see a statistical count of unemployed versus employed among blacks. We do see and hear that unemployment is dropping and employment is on the increase, but for whom, not among hard-core poor black minorities.

The only economic program of direct benefit to low-income residents in the black community is an economic project sponsored by the Bethlehem community for the hard-core unemployed. It has survived on small grants from private foundations and, to this date, has not received one penny of C.D. money. This project has requested funding each year since 1978, and each year it has been ignored.

Hence the interpretation of citizens participation begins and ends by addressing your needs and interests in the public hearings to satisfy the token nod toward guidelines. But no answer is returned; no one is listening; no one cares.

Administrative complaints have been addressed to HUD, but HUD returns them. The agency seems powerless and almost afraid to meet with community leadership, without approval from the grantee, the city of Augusta, who boasts of a $40,000 park in the black inner city that is 95 percent complete, consisting of a mudhole and two floodlights.

The city has for one—the white downtown business district—developed visions and implemented dreams. For another—the black inner city—it has not even offered a hope.

HUD must, in its role as guardian of the Federal trust, be strengthened sufficiently to effectively monitor the administration of funds from the Federal Treasury.

Civil rights of minorities, as addressed by title VI, is an unfinished agenda. The equal rights of all citizens, especially black minorities, reflect the sovereign rights of States and localities over the supreme law of our Constitution and Federal Government.

Discrimination breeds waste and greed. At this time in our Nation, it is a most diversive element to our union as a nation. The average black citizen will agree that the America that gave him freedom and equal rights has retrogressed to repossess these principles and that the fight for civil rights has just begun.

Thank you.

Mr. Edwards. Thank you very much, Ms. Powell. The last member of the panel to testify is Mary Ann Oakley, Esq., of Atlanta Legal Aid Society, Atlanta, GA.

Ms. Oakley. Thank you. For more than a decade I have practiced law as a private attorney in a small law firm, representing plaintiffs in all kinds of employment discrimination and civil rights cases. I have, on behalf of my clients, litigated against the Federal Government, various agencies of State government, almost every local government in metropolitan Atlanta, virtually every institution of higher education in the area, and I am sure, more than half of the corporations and businesses in greater Atlanta.

Georgia is one of those States with no effective laws to protect employees who do not have employment or union contracts. The existing Federal statutes provide for the possibility of injunctive relief—reinstatement, promotion—and permit for the most part only whatever pay and fringe benefits are lost.

Class actions have become much rarer, both because of the Supreme Court decision holding that class action in title VII cases must meet strict rule 23 requirements, and because discrimination itself has become more subtle and individualized.

In most cases involving individuals, the possible recovery by a plaintiff is not—to the employer at least—very much money. Even the addition of attorney's fees for their lawyers, and the threat of having to pay my fees as well if my client wins, do not really deter discrimination.

Why not? Because it is difficult for an individual plaintiff to win, even in the best of cases. And litigation is frightfully expensive. Most of the lawyers in this part of the country cannot afford to take more than a case or two at a time on a contingency basis.

The courts whittle away at our fees when we win; and the Supreme Court has in most cases ruled out the multipliers that would help compensate for the cases we lose. We must therefore charge at least a partial fee.

Most people simply cannot afford to sue a corporation, institution, or governmental body, given the relatively small reward if they win. Employers know that, in the great percentage of situations, they can get away with anything because no one will call their hand.

Even in age discrimination cases, in which many times large dollars are at stake because pensions are involved, the Supreme Court has recently effectively removed the possibility of liquidated damages in all the rarest of cases.

The EEOC and other enforcement agencies, at least in this part of the country, are virtually worthless. Most of the attorneys in the Atlanta area who practice discrimination and civil rights law, whether representing plaintiffs or defendants, agree that such agencies are at best do-nothing and often counterproductive.

The EEOC has reorganized so frequently in the last few years that almost every charge goes through two or four different investigators and goodness knows how many supervisors before anything happens, which explains why nothing is done.

The only effective weapon against discrimination is, in short, the real threat of loss of Federal funds to the entire institution, agency, or business, if discrimination exists in any part of that institution, agency, or business.

By 1980, we had come far since the unconscionable discrimination and segregation of the 1950's and before, but institutional racism, institutional sexism, institutional ageism and barriers against the disabled still thrive. It is to attack these institutional barriers to equality that we must have S. 431 and H.R. 700. Nothing less would be true to the basic principles of equality and justice upon which our country was founded.

But there is an even greater reason that being true to our heritage. Our people are our most important national resource.

In these sophisticated and troublesome times, we need to assure that all of our citizens develop and produce to the greatest extent of which they are capable. We cannot afford any less. The toll which discrimination takes is beyond measure, in terms of lost productivity and tax dollars, and damage to our moral and spiritual fabric.

We must stop discrimination with the most effective tools at our disposal. S. 431 and H.R. 700 give us some of those tools. I urge the Congress to enact this legislation quickly so that we may move forward once more.

I want to echo what Ms. Gardner said, failure to enact the legislation is a loud and clear message that discrimination may go on and will not be changed. We can't afford that. Thank you.

Mr. EDWARDS. Thank you. Very hard-hitting testimony .

Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

I have a brief statement and an omnibus question. First of all, I am happy to see former constituents, Dr. Lacretia Patton and Ms. Addie Scott Powell.

Second, I am reminded of this kind of moving testimony that by accident of birth, I may have been in Monroe, GA, where my father was born, or right outside of Jackson, MI, where my mother was born, and so on. I come to these hearings with a very deep sense of conviction that we have got to move forward; and also that this provides me with an opportunity to rejoin the struggle with new dedication. My admiration for all of the witnesses here this afternoon is absolutely unlimited.

I frankly don't know how you take it. As a Member of Congress, I have plenty of outlets all of which I am told I use fully; the attention of being black in 1985 and struggling to move this along at the national level but here you are laboring in far, far more difficult circumstances.

You know my feeling here is compounded because our colleague from Illinois, Mr. Charles Hayes, just visited in the Atlanta Federal Penitentiary, during the lunch break, a former labor colleague of his, who was, as my father was, a member of the coalition of black trade unions. He told me when he came in later for the afternoon session, we have got some work to do over on that score.

I keep thinking about the direction of a policy that is both national and local, that is easier to lock them up, and even send them to school, to worry about unborn rights, than what you do after we bring them here.

That we keep getting the wrong messages. And so I am going to go over this testimony and I think there is more than one member of this committee that is going to review the kinds of steps that we ought to take.

My question is this: Or my questions, I will give you all of them the once. Have any of your Federal legislators at the Senate or House level been made aware of the dimensions of the problem? I said that not to pick on them, but to offer a number of Members in the Congress who would want to work along with them?

No. 2, do you perceive this civil rights slippage as emanating from federally directed policies coming from Washington, District of Columbia?

No. 3, what more do you recommend that can be done at all of the various levels?

Ms. **Oakley**. I will start with No. 2, and the answer is absolutely, yes. I think we have seen over my lifetime, which is 40-plus years, that whatever happens in Washington sets the tone for the rest of the country.

We in the South were pushed, kicking and screaming in some respects, into the modern era, and I think that it is very clear that our local and State level politicians, being close and responsive to the people, are not going to do anything to keep us there, they sense that the moral tone from Washington is that it isn't necessary, that the situation has been resolved, our President has decreed discrimination has ended. Ain't so, not around here anyway.

Mr. **Edwards**. Thank you.

Ms. **Powell**. I would say I am in accord with that for the simple reason that I as an American citizen I feel that being in Georgia is just coincidental, although I know I was born here and couldn't get away from it. I feel that as an American citizen my rights begin and end with Washington, and when things happen to me, when they are permitted to be done, I do not feel that any State should circumvent or expel the right of the Federal Government to protect each one of its citizens.

My brother fought in World War II, and my brother died in World War II. We, too, pay sacrifices. No one asked where I came from when I must serve my country. I think that for once the U.S. Government will have to take control of these programs that it sponsors.

Mr. **Edwards**. Thank you.

Ms. **Gardner**. I will answer your first question, I don't know what other people have to say, but I work for a grantee in the legal services corporation and I don't contact Congress and representatives unless they contact me first. I think you are all acquainted with the problems of which I speak.

Perhaps that is a shame; since you asked the question, I will tell you I think it is a shame. But that is the answer, my answer to your first question. Mrs. Powell may have a different answer, I don't know.

As to the second, I think I addressed in my testimony I don't want to belabor as I heard a lawyer who spoke for an hour say a few weeks ago, I don't think there is any question that people in this part of the country are getting a lot of messages about a lot of things from Washington, some of which may not be intended. But the messages are written down in everyone's mind, and they are acting on them.

And one is that the era of civil rights laws has come and gone, and that there will be no further Federal enforcement, that if you catch them at it the Justice Department will ensure that with a no-race-conscious remedy, there is no remedy.

The message is very clear and it is a very frightening one, because racial segregation—not all of us on this panel are black—and that is because racial segregation doesn't just hurt black people, it hurts all for us who have to live here in the midst of it, who have to walk through neighborhoods, and see children grow up in that kind of dismal, hideous environment with their lives stifled before they get past the age of 8.

What you can do about it, the Congress is a branch of three, and you can send, I think, a very clear message to this part of the country that you haven't forgotten about us, that racially segregated education and housing and health care, and employment is intolerable, that the Federal Government is there and is here.

That is more important than anything else that you, not just in Washington, that the Federal Government will be here and will be active in combating the problems that you have heard about today. If that message doesn't get through very soon, things are going to get a whole lot worse down here.

Mr. **Edwards**. Thank you.

Ms. **Oakley**. The other thing I would like say to that, I see the court picking up on the political climate and the courts which once were our last resort have now, and are becoming in many instances, a barrier.

Insofar as Congress taking our representation in Congress, I can say that Senator Nunn and Congressman Fowler have been helpful in the past in terms of trying to get through some redtape, log jams. I have personally not discussed the dimensions of the problems with either of them because when I sit down to think about writing it out it becomes a book, and I just simply have not had time to do so.

Ms. **Johnson**. Just a comment on our fourth question, what more can you do. I have considerable dismay when I struggled to be in touch with the limited marginal gains that were made even in good times, and these are not at all good times in the South, in the country. Because of the messages that are being interpreted as saying it is OK to be performed outside of the buttress of civil rights laws. So, the question then comes back to you, what more do you think you can do as we move into what, I think, will be some very, very challenging years, and all of the civil rights laws?

Mr. **Conyers**. Thank you very much.

Ms. **Powell**. I would like to make another small note to that. I think what you are doing today is very important and this is what I would like to see more of. I would like to see you come back home and walk with me, all of you walk through my neighborhood, walk in my shoes.

This is when you will find out what is happening, and where it is, and this is what will scare the devil out of ripe as it can be for a take off. What do you have to fight for? And you try to hold it up, we who try to help the task, it becomes exceedingly difficult. I think if you did more of the trips—because this is the only way you know it.

You will not get it through your lines and your channels. If you go to my Senator, that is the same man that took all the lights and put them down there. Or his buddies. So no point in going there.

I try, too. We have filed suit, and one of the reasons we were held up is because we dared to exercise the use of the court, which is a right as a citizen. If chambers of the Government do not answer me I have a personal and legal right to use the court. But we were denied eligibility, not on the basis of the project, but because we had a suit against the city; and landlords have suits against the city every day, but they were white.

Mr. CONYERS. Thank you all very much your counsel.

Mr. EDWARDS. That is very highly charged; and helpful.

I am going to recognize Mr. Sensenbrenner, who I remind you, was one of the committee members in the leadership to extend the Voting Rights Act. And he was also active is strengthening one just a couple of years ago.

Mr. SENSENBRENNER. Thank you, Mr. Chariman. That leads into one of the comments that I wanted to make.

Ms. Gardner, you have said that the era of civil rights has come and gone. If that is the case it is unfortunate. But if that is the case, it is also due to the fact that there are those who use civil rights laws as a way to score political points rather than seeking out and obtaining genuine bipartisanship from the very beginning.

The reason civil rights laws were passed, from the time of the Eisenhower administration, was because there was genuine bipartisanship in civil rights. Advocates cannot wish to use this forum as a way of trying to get people to vote one way or another or for one candidate or against one candidate. I am afraid that we have gotten away from that, particularly in the last 5 or 6 years.

The last major advance in civil rights was the extension of the strengthened Voting Rights Act of 1982, and that was because I acted as kind of a one man fire department to bring some Republican support to the extension of the Voting Rights Act, notwithstanding the fact that there were those who simply want to use that issue as one way of drumming up hostility to the Reagan administration.

I have given this speech before, not in Atlanta, but most often in Washington, DC; and I genuinely feel that was, that if we want to bring civil rights in the partisan arena, so be it. It is going to have to suffer its lumps like everything else in the partisan area.

Frankly, I think that was one of the reasons why there has been less progress in civil rights law, is because it has been dragged into partisan politics, and because for the last 5½ years, the voters of this country have given the parties decided control of Government with the Democratic majority of the House, and Republican majority in the Senate, and a Republican president.

So anything that gets passed, whether it is in this area or anything else, it has to be bipartisan. That brings me to my second comment.

Ms. Powell, your very eloquent testimony, I think, is a strong endorsement of the Reagan administration's initiative to get rid of community development block grants, and to replace those block grants with some kind of a voucher system where the recipient would actually decide how the money would be spent; and the lessening of the horror that has gone on in Augusta, GA.

Pages 2 and 3 of your testimony, I think, all were practically locked in place before the Supreme Court handed down the *Gove City* decision a little bit more than a year ago. When we had the so-called broad endorsement of title VI and IX in section 5 or 4, in the Age Discrimination Act, that still didn't do any good.

You still had all of this misallocation of money. And money that was allocated by the Congress to relieve poverty, and to relieve suffering, and to improve housing conditions, simply didn't do that, the poor got poorer and rich got richer.

So, maybe the time has come, not in terms of looking at this particular bill that is before us, but in terms of how the Congress puts together Government programs, that we try a new approach. I am not here endorsing what the Reagan administration is proposing in terms of the budget.

But at the same time I think that one of the allegations that they make, that we spent billions of dollars fighting the war on poverty and after 20 years we have lost, that it is time for a new approach, ought to be seriously considered.

Ms. **Powell**. May I answer that, please. I think one of the things, I thought you would catch that, and I thought that would do exactly what it did to you, and I will agree on one basis with you, if they can't do any better, I wish to heck you would take it away. I can't see it being thrown away, but we can't throw the baby out with the water. The CDB Program is a good program, and the reason it is good is simply this. Because we have learned a lot from it.

It demands that people who receive it do something for it, and it is not the voucher, it is not a give me. This is how we started the Allied Services Cooperative, which we clean houses so that people can pull themselves up by their boot straps. And they do this because they realize after studying, that there is a way out of this economy.

If they get the message from us that we are going to destroy the CD, let the money go back in since they are not doing anything, all I would take that to mean, all I can take back to my people is we are now, since they have gotten all $20 million, they are going to close it down.

Mr. **Sensenbrenner**. Well, I guess I can respond to that by saying you are a bit more optimistic than I am that they are going to get the money when it is your turn.

Ms. **Powell**. I will never be that optimistic. Knowing what has happened in the Federal Government thus far. I will, if we can pass this bill, I will, if you do some of the things that you said you are going to do. I have confidence you will, this is what keeps me going; were I to think differently I could not move.

Mr. **Sensenbrenner**. Well, I am hearing from mayors in my State that we have got to keep this program, Urban Development Act Grant Program going, so that we can build more shopping malls renovate more hotels into luxury hotels.

I don't think that is what it was passed to do. Quite frankly, I don't think Uncle Sam ought to be borrowing and adding to the deficit to do something the private sector ought to be doing for themselves like that.

Ms. **Powell**. We agree on that one.

Mr. **Edwards**. I would only point out that in the travels that I have made in the last few years to Asia and other places, and some few countries that we describe as behind the Iron Curtain, the governments, especially in Asia, are heavily involved in providing housing for their people, and families that need the help. We are providing less and less and less, and when we do provide it, too often it is segregated.

Mr. **Sensenbrenner**. Reclaiming my time. The difference between those governments is that we are giving people an opportunity for input, and they don't even make a pretense of that.

Mr. **Edwards**. I am talking about Hong Kong and Singapore and countries that certainly are not Communist countries and Taiwan. Taipei is loaded with apartments all over. That is another island.

Mr. **Sensenbrenner**. With the exception of Singapore, none of those countries are outstanding examples of democracy in action either.

Mr. **Edwards**. Well, when we neglect our people we fall into the same description. That is what we are doing and all of this testimony today so indicates this.

Mr. **Hayes**. Thank you, Mr. Chairman.

First let me apologize to you, Mr. Chairman, and to my colleagues here, and to you as panelists, for having to go out. As Congressman Conyers had said, I did have to keep up a commitment I had promised, that if I ever came to Atlanta that I would drop off and see the coalition of men from labor who are incarcerated, I think unjustly, but that is another matter.

In my opinion, I just pass this on for what it is worth, I have noticed that partisan approach to the issues that have come up here, not while I was here, I really believe that sometimes we align ourselves to what is a real problem and I think we are.

As we have these hearings throughout these United States, the drum beat for the most part is the same. I don't care whether it is in Atlanta, or New Orleans, or Los Angeles, Philadelphia, New York, people are crying out who need help, disadvantaged poor people. And I think we don't hear it; and sometimes I am included, and that it has already been predetermined that certain people are expendable in the society of ours, and we don't need to waste or spend money on them.

I hope I am wrong. But I get a feeling this way. But I just want to say to you, it is going to be my intent to carefully scrutinize your testimony. What I have heard here has been very impressive. And I hope that we are able to muster enough support in Congress to nullify the impact of Grove City by passing H.R. 700.

I think it is what it is intended to be, it takes us back to where we were. As I heard part of the evidence, I heard from you here, it seems to be quite clear that discrimination is alive and well and functioning, not only in the South, but where I come from in the Midwest. We are loosing some of the things we used to have in the Midwest, including jobs down there.

I am concerned. I know we are not supposed to get into it but I intend to go to Mississippi, just below here, those teachers maintain their strike down there, and see what I can do to help them, because I think they are in a situation now where enough of our kids are trying to go to study to be teachers, and I think wages is one of the deterrents.

People don't want to teach. I think we have got to do something with our system in order to make it more conducive to people who want to become teachers, so we can give our kids the kind of education they deserve, and need. God knows we shouldn't have barriers put up in the way of a kid based on race, sex, and because they are handicapped. That is what 700 is all about, and that is why I am for it.

Mr. **Edwards**. Mr. Mitchell.

Mr. **Mitchell**. Mr. Conyers asked a question a while ago to this panel, I would like to respond to part of that question that he asked because that affects me. That is the question of what can we do, if my understanding is right, what can we do, what is going on?

No. 1, I want to say this. I have traveled and organized all over the southeastern States. I have been to every State in the Southeast, organized, I workéd for the National Sharecroppers, worked for education projects, I also worked for Crow Systems Research where we had a contract. I have traveled, I know these areas; you find the same conditions everywhere you go.

Now, what can be done? First I think we left out something, human rights. Civil rights we need that, too; but we need human rights, too. We left that out.

Next, the enforcement power that the people have in charge of these programs, the Federal Government is not being enforced. Unless this panel, this investigation committee I hope will make recommendations, look into why are these laws not being enforced.

Next thing, you are going to hear from the poor people, you don't allow them to sit on the boards of directors, it is set up so they can be kept off, everybody thinks poor people are dumb in the communities; we have some of the smartest people in the community, because we know what is going on.

Mr. **Edwards**. Mr. Gunderson.

Mr. **Gunderson**. Thank you, Mr. Chairman.

I would like to address a comment to Ms. Oakley. You mentioned the problems with the Equal Employment Opportunity Commission. I happen to be the new ranking member on the subcommittee with jurisdiction over that commission, and I would appreciate you forwarding to us any information that you have that we might be able to pursue if they are not following through the way that the law is intended. I would extend that invitation to you.

I don't think there is any doubt that all of us are moved by your testimony and your concerns today. We have had rather interesting discussions preceding my point here in the questioning process. I would caution you on one point, however, you have talked about what you perceive to be a changing political attitude in the region, and in the country, and perceive backlash politically with the equal rights movement.

I think that is why what we are trying to do on this bill becomes so important. I won't take a backseat to any in my civil rights voting record in Congress; I am a cosponsor of an ERA bill, I was cosponsor of the remedial legislation in this area last session. And yet, I think what you talk about when you talk about a backlash is perhaps sometimes implementation of programs that go beyond what the intent is.

I am not saying that we should, that is, we need to define what is the intent of this bill, it is simply restore Grove City, or frankly, to broaden. I get conflicting viewpoints from those who are authors of the bill.

Second, we bring in such questions as to how far down the chain in the hardware hangs, and other areas, does it or does it not include. I don't know what the answer is. I better know what we want that answer to be before we try to implement the pacticular test of legislation, or we are going to continue the backlog, that frankly, does hurt the equal rights movement. And I just share that with you, we need that technical expertise. I mentioned the hearing in Washington, that I am not a lawyer, I don't want to be a lawyer, and——

Mr. **Edwards**. Neither do I, but it is too late.

Mr. **Gunderson**. But frankly, we are in a situation where I think it is a very difficult, legal technicality is really what we are trying to resolve here, I don't think there is any debate on this committee as to what our goal is. It is much more specific than that.

Thank you, Mr. Chairman.

Mr. **Edwards**. Thank you.

We have to catch an airplane. But I do want to thank you on behalf of all of us. And like the Skin Bracer ad, "We needed this." We coming from Washington, California, Wisconsin, Michigan, we need people like you.

We don't have Martin Luther King anymore to tell us the right paths to take. We have to rely on other people. We have to rely on you, even though, perhaps, you might feel your voices are softer than some of the civil rights leaders of the past. But we all have to get in there and pitch. We have to do a lot better in Congress, but it is very difficult.

I will say the same thing about all presidents, Republican and Democrat, the minute they get in there, they make a lot of promises when they start, then they get all involved with the Russians and Cuba, or whatever they get involved with, they don't really pay attention to what is going on here at home with the quality of people's lives in this country. It is a bipartisan disease that you catch from mosquitoes coming out of the Potomac River.

So we have to make up, you have to make up for it, and you have inspired us to get on that old Delta plane and do better.

Thank you very much. We are going to enact H.R. 700 and overrule *Grove City*.

[Whereupon, at 3:10 p.m., the committee adjourned.]

CIVIL RIGHTS RESTORATION ACT OF 1985

FRIDAY, MARCH 15, 1985

House of Representatives, Committee on Education and Labor, and Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary,
Washington, DC.

The Committee on Education and Labor and the Subcommiteee on Civil and Constitutional Rights of the Committee on the Judiciary met in joint session, pursuant to call, at 9:26 a.m., in the Ceremonial Courtroom, Dirksen Federal Building, 219 South Dearborn Street, Chicago, IL, Hon. Augustus F. Hawkins (chairman of the Education and Labor Committee) presiding.

Members present: Representatives Hawkins, Hayes, and Sensenbrenner.

Staff present: Karen Vagley, associate counsel, Committee on Education and Labor; Ivy L. Davis, assistant counsel, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary; Electra C. Beahler, minority education counsel, Committee on Education and Labor; and Philip Kiko, associate counsel, minority, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary.

The **Chairman**. The meeting is called to order.

Good morning. The full Committee on Education and Labor and the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciairy meets today to continue a series of hearings on H.R. 700, the Civil Rights Restoration Act of 1985. It is a great pleasure to again be in the beautiful lakeside city of Chicago. I want to thank all of the people of Chicago who made our trip more enjoyable and who have so ably helped organize these hearings. I also want to welcome our visitors and the witnesses who have agreed to appear today.

As I am sure most of you know, H.R. 700 provides for the restoration of four civil rights statutes to their pre-*Grove City* coverage and vitality. The four statutes are title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

In essence, however, H.R. 700 sets forth a very simple notion, that Federal dollars should not be allowed to subsidize discrimination against minorities, women, the aged, or the disabled; that if discrimination occurs, there is a remedy available. This is not a new or startling notion. In fact, it is a view to which most people in this country subscribe and already believe exists in law.

In conducting these field hearings, the committee has noted the general acceptability of the notion of linking the duty of nondiscrimination to the receipt of Federal assistance, but we have also been made painfully aware of the message that will be sent from Washington if H.R. 700 is not passed. Witness after witness has come before this committee expressing concern that if no action is taken we will, in effect, signal to the world that the days of civil rights enforcement are over and that, as a result of such message, there will be major slippage in the progress that has been made since the passage of the Civil Rights Act of 1964.

One witness described the lack of progress toward equality prior to the original enactment of these laws to the inertia of history, and to the failure of voluntary effort. Are we again reinstating that inertia as our national policy on civil rights? As the original sponsor of H.R. 700, I can tell you that the Congress will not permit that to happen.

Today, I would certainly like to ask each witness to comment on this restricted enforcement, and whether this policy will stifle voluntary efforts to enhance equality which might otherwise have been undertaken.

At this point the Chair will yield to Mr. Sensenbrenner, the ranking minority member of the committee.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. I, too, welcome the opportunity to come to Chicago to listen to witnesses from the Midwest relative to the impact of the Supreme Court's decision in the case of *Grove City College* v. *Bell* on civil rights enforcement, and specifically the provisions of H.R. 700.

One thing that all of us, including the administration, agree upon is that the Supreme Court misinterpreted congressional intent in rendering the *Grove City College* decision and that some legislation is necessary to overturn that decision and to prevent that decision from being used as a precedent not only in title IX but also in the three other civil rights statutes that we are considering today.

Unfortunately, specific legislation does not involve the discussion of general principles of civil rights enforcement. I would hope that the witnesses today look at the specific provisions of H.R. 700 and give their testimony relative to three basic problem areas that have developed during these hearings:

First, the coverage in the public sector is substantially narrower than the coverage of the private sector. H.R. 700 limits coverage in the public sector specifically to those departments or institutions that receive Federal funding, and in the case of colleges and universities, systemwide coverage; whereas in the private sector the coverage is far broader, including any entity, including franchisees or independent contractors of an organization that does receive funds directly or indirectly.

Second, this bill proposes a change in the pinpointing language that has existed in title IX to date. There are some who have claimed that the pinpointing language in H.R. 700 is significantly broader than the law that was existing before the *Grove City* decision was rendered.

The third basic problem is the allegations that some private colleges and universities that do not accept and will not accept Federal funds will also not accept guaranteed student loan students because they would be brought under the coverage of title IX by this bill and, as a result of this refusal to accept students who are receiving guaranteed student loans and other forms of Federal student financial assistance, they would thus be denying the right to a private education for those students.

We are looking at specific pieces of legislation in H.R. 700, not general principles of whether civil rights enforcement is good or whether it is not good. I believe that if H.R. 700 is to pass and not meet the fate of its predecessor bill, H.R. 5490, last year, these questions are going to have to be answered.

I do not approach this subject as a hostile member of the committee. I cosponsored H.R. 5490 and, further, I refused to cosponsor a far narrower bill that the Reagan administration has introduced in the Senate through Senator Dole of Kansas. But at the same time I recognize that politics is the art of the impossible. I want to see a bill passed. I don't want to see a bill overturning Grove City be killed like the predecessor bill was last year, and I believe that answers to specific questions such as those that have been raised in my opening statement, as well as by witnesses at the preceding three hearings, are going to have to be forthcoming if this bill is to meet a better fate than its predecessor in the last Congress.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Sensenbrenner.

The Chair will at this time yield to the member of the Education and Labor Committee in whose district we are meeting today.

It is not accidental that we are meeting in Chicago. A site in the Middle West was decided upon after much deliberation. One of the pleasant features about the hearing today is that it is also a city in which a distinguished former member of the Education and Labor Committee is the mayor. As a member of my committee and my subcommittee, Mayor Washington made a lasting and distinguished contribution. I always appreciated his cooperation, his support, and his diligent leadership in those things that I think make for a better life for all of us.

I would like to recognize another member of the Education and Labor Committee from Chicago, Mr. Hayes, who has carried on in the same tradition as his predecessor from Chicago, and who has traveled with me around this country in the last several months and has been patient and dedicated in his duties at all times.

At this point, the Chair will turn the gavel over to Mr. Hayes who will preside in the hearing today.

Mr. HAYES [presiding]. Thank you, Mr. Chairman.

I would like to thank you and my other distinguished colleagues of the Education and Labor and Judiciary Committees for selecting the city of Chicago as one of the sites to hold hearings on what may be one of the most important pieces of civil rights legislation in this decade, the Civil Rights Restoration Act of 1985, H.R. 700.

There is just one correction, Mr. Chairman. While you are in my city, the hearings are being held in my colleague's district, Congresswoman Cardiss Collins, instead of my district. My district begins just south of here.

The CHAIRMAN. I thought you told me that you shared the district that had all of the tall buildings. [Laughter.]

No, no; I don't head the district where the money is. The money is down here. [Laughter.]

Poverty is in my district.

I would like to thank the mayor of this great city, the Honorable Harold Washington, for taking the time to join us here today. As a former member of these committees, certainly you understand the significance of these hearings. We appreciate your continued interest and support.

I also want to thank all the witnesses who have agreed to testify and the ladies and gentlemen who have come here to hear and support this debate. Your presence demonstrates your concern about the direction this country is taking with respect to our civil rights laws.

The recent Supreme Court decision in *Grove City* v. *Bell* is a dramatic departure from the congressional intent of the Civil Rights Act of 1964 and makes a mockery of the struggles of many Americans who fought hard for its passage. The denial of the most basic and fundamental rights of any American citizen or a group of citizens against any form of discrimination presents a clear and present danger to our system of government, our way of life, and the stability of our Nation.

Mr. Chairman, we cannot begin to address the seriousness of the problem which faces the Congress and this Nation if we fail in our duty to protect the basic rights of all Americans. It is my hope that the testimony taken today and from other hearings similar to this will inspire the Congress to seriously consider the Civil Rights Restoration Act and push for its immediate passage.

I would like to call upon the mayor of the city of Chicago as our first witness.

STATEMENT OF HON. HAROLD WASHINGTON, MAYOR OF THE CITY OF CHICAGO

Mayor WASHINGTON. Thank you, Mr. Chairman, and Congressman Hawkins, Congressman Sensenbrenner. Welcome to the great city on the end of the lake. You are more than welcome here.

I must confess to you that I am doubly nostalgic as I sit before this dual committee, this two-pronged committee. I had the pleasure of serving in the Education and Labor Committee and under the leadership of Congressman Hawkins who served as chairman of the Subcommittee on Employment Opportunities. It was a wonderful experience, one which I cherish deeply, and although I have no designs for returning to Congress—I have a good job—I must confess to you that I sometimes look back nostalgically on our experiences as we traveled across the country trying to solve some of the knotty problems of this country.

I see Congressman Sensenbrenner, who I served with on the Judiciary Committee, a—I started to say an adversary—but a worthy Member of Congress who, through his perception and ability to put things in a nutshell, in a capsule, I think has been of monumental service to the committee.

My statement, unfortunately, Congressman Sensenbrenner, may be a bit general, and I may not be able to hone in precisely on the three questions that you asked. But then I could never hone in on the questions you asked anyway. [Laughter.]

But they do go to the heart of it and the hub of it, and perhaps I in some way peripherally can touch on them. But please don't hesitate to cut into my testimony. I hope it's not too long. I will try to keep it as short as possible.

I am grateful for this opportunity to speak in support of the Civil Rights Restoration Act of 1985. This bill hopefully will undo the damage caused by the Supreme Court's decision in *Grove City College* v. *Bell,* and, more importantly, it will hopefully prevent the damage threatened by that decision. I welcome the opportunity to appear here today to express not only my personal concerns over *Grove City,* but to relate to this committee the implications of the decision and of the last Congress' failure to respond to it.

The statutes amended by this bill—title IX of the Education Amendments of 1972, title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975—contain similar language, as you well know, prohibiting discrimination under any program or activity receiving Federal financial assistance. Title IX is limited to discrimination based on sex in most educational programs, while the other statutes proscribe discrimination in any program receiving Federal funding; title VI, discrimination based on race, color, or national origin, section 504 of the Rehabilitation Act, discrimination on the basis on handicap, and the Age Discrimination Act, discrimination based on age.

Prior to *Grove City,* it was widely held in the Federal courts, in Federal enforcement agencies, and among recipients of Federal funding, that these laws prohibited discrimination in any aspect of the recipient's activities and not just in those activities which actually involved in the discriminatory action. Withdrawal of Federal funding, always as a last resort to achieve compliance with these civil rights laws, was limited to the program or activity engaged in or affected by the discriminatory action. A majority of the Supreme Court in *Grove City* held, however, that the prohibition against sex-based discrimination embodied in title IX was limited to the specific program receiving Federal assistance. In other words, the Federal Government could provide financial assistance to one aspect of a recipient's activity while ignoring discrimination in another aspect occurring on the other side of the same room.

The Civil Rights Division of the Justice Department has indicated that the limited view of the *Grove City* majority is the correct standard for application of the other civil rights acts amended by this bill. As disagreeable as this position may be, it may also be correct. The same day it decided *Grove City,* the Supreme Court applied this same limited standard to an employment discrimination case under section 504 of the Rehabilitation Act. It is clear that the program or activity language in title VI of the Civil Rights Act of 1964 was the source of the language of the other civil rights acts mentioned.

Fortunately, as the congressional sponsors of this bill have made clear, *Grove City* and *Darrone* can be remedied by legislation. It is unfortunate, however, that these setbacks were brought about by the U.S. Justice Department. It is even more unfortunate that this was not an isolated incident under the current administration. The

Justice Department filed a brief in the Supreme Court advocating the position eventually taken by the majority. The Justice Department wasted no time in stating that other civil rights laws should also be limited.

Recently, the Justice Department hailed a Supreme Court decision as sounding the death knell for affirmative action programs, the case was *Firefighters Union* v. *Stotts*. It is painfully obvious that the Justice Department, under this administration, moves more quickly to undo the civil rights laws than it does to enforce them. The *Grove City* decision has already resulted in the Justice Department's abandonment of more than 60 civil rights cases involving educational institutions. More are being reviewed. It is likely that actions to enforce the other civil rights laws will also be abandoned. The victims of discrimination will be left without a Federal remedy, while the perpetrators of discrimination will continue to receive Federal financial assistance.

Clearly, this is an unacceptable state of the law. Can any responsible American speak out in favor of sex discrimination in education, in favor of racial discrimination in any activity? Can any responsible person advocate discrimination against another on the basis of handicap or age? The answer is of course not. Can we then allow—or worse, can we require—the Federal Government to ignore or to countenance discrimination by a recipient of Federal funding because the discrimination has been carefully limited to activities which do not receive Federal moneys? Again, the answer must be a resounding "No," if we are to preserve the gains of minorities, women, the handicapped and the aged in their struggles to achieve equality of treatment in our society.

The Civil Rights Restoration Act will prevent *Grove City* from having any further impact and will help stop the erosion of more than two decades of progress toward ending discrimination. The name of this bill is most appropriate; it seeks only to restore the law to what most of us in this room thought it was only 13 months ago. The enforcement of the various civil rights acts will not be expanded beyond what it has been under past administration of both political parties.

Simply stated, this bill would require that a recipient of Federal financial assistance refrain from illegal discrimination in any of its activities. The social good of such a requirement is beyond debate by responsible persons. The unfairness of discrimination based on sex, race, national origin, handicap, or age is simply no longer questioned. The debate, if there is need for any, would more properly be centered on the means of enforcement if any change were being proposed. But the Civil Rights Restoration Act does not seek a revolution in enforcement but, rather, preserves the enforcement techniques currently available. The withholding of Federal funds remains the sanction of last resort and remains limited to funds used to support discriminatory activity.

Federally funded activities not tainted by illegal discrimination will not be threatened. Thus, larger recipients of Federal financial assistance—the States, large cities, diversified educational institutions and diversified corporations, as I understand it—need not fear catastrophic withdrawal of Federal support from all their various programs due to a problem of only one activity. Indeed, if a recipient fulfills its moral and social obligations to refrain from discriminatory actions, the withdrawal of Federal funding will never be a problem.

This is not complex legislation, in form or in legal consequence. Passage of the Civil Rights Restoration Act will not mark a new milestone on the road to social justice. But it seems to me that failure to pass this bill will send the unmistakable message that the Congress of the United States has joined tacitly, if for no other reason, in forsaking and even undermining the cause of civil rights. It will be clear to all Americans that women, minorities, the handicapped, and the aged can be relegated to inferior status; that the Federal Government will look the other way when it encounters discrimination so long as the recipient of Federal funds pays for its discrimination from a separate account. The perception of two Americas—one for the privileged, one for the disadvantaged—will be increasingly accurate.

This, I think, is not an exaggeration, I assure you. Since the decision of *Grove City,* my office has been contacted by numerous individuals and organizations representing these very groups. They view this decision as symptomatic of the Federal Government's attitudes. They have expressed to me their feelings that the executive and judicial branches of the Federal Government have forsaken the cause of civil rights, as well as their fear that Congress also might abandon the cause. They consider the legislative efforts to overturn the *Grove City* decision during the last Congress a major test of Congress' commitment. The current bill has taken an even greater significance due to the failure of Congress to act last term.

We must stop the erosion of progress in civil rights. We must restore the gains lost under this administration and prevent any more from being stripped away. We hope that the progress will begin with the passage of the Civil Rights Restoration Act.

Based upon the sponsors and cosponsors—which I didn't count, but they seem to be numerous—I have great faith that the Congress will address itself forcefully and positively to this question which on the surface can be simple, but if allowed to continue, will erode some basic confidences that have been built up in our tripartite branch of Government.

Thank you for indulging me. I didn't think it was going to take quite this long, but I appreciate your indulgence.

[The prepared statement of Mayor Harold Washington follows:]

PREPARED STATEMENT OF HAROLD WASHINGTON, MAYOR OF CHICAGO, IL

Mr. Chairman, I am grateful for this opportunity to speak in support of the Civil Rights Restoration Act of 1985. This Bill will undo the damage caused by the Supreme Court's decision in *Grove City College* v. *Bell* and, more importantly, will prevent the damage threatended by that decision. I welcomed the opportunity to appear here today to express not only my personal concerns over *Grove City,* but to relate to this Committee the implications of the decision and of the last Congress' failure to respond to it.

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Rehabilitation Act, discrimination on the basis of handicap; and the Age Discrimination Act, discrimination based on age. Prior to *Grove City*, it was widely held—in the federal courts, in federal enforcement agencies, and among recipients of federal funding—that these laws prohibited discrimination in any aspect of the recipient's activities, not just in those activities which actually involved in the discriminatory action. Withdrawal of federal funding—always as a last resort to achieve compliance with these civil rights laws—was limited to the program or activity actually receiving the federal funding. A majority of the Supreme Court in *Grove City* held, however, that the prohibition against sex-based discrimination embodied in Title IX was limited to the specific program receiving federal assistance. In other words, the federal government could provide financial assistance to one aspect of a recipient's activity while ignoring discrimination in another aspect, occurring on the other side of the same room. The Civil Rights Division of the Justice Department has indicated that the limited view of the *Grove City* majority is the correct standard for application of the other civil rights acts amended by this Bill. As disagreeable as this position may be, it may also be correct: the same day it decided *Grove City*, the Supreme Court applied this same limited standard to an employment discrimination case under Section 504 of the Rehabilitation Act (*Conrail* v. *Darrone*, 104 S.Ct. 1248). And it is clear that the "program or activity" language in Title VI of the Civil Rights Act of 1964 was the source of the language of the other civil rights acts mentioned.

Fortunately, as the congressional sponsors of this Bill have made clear, *Grove City* and *Darrone* can be remedied by legislation. It is unfortunate, however, that these setbacks were brought about by the United States Justice Department; it is even more unfortunate that this is not an isolated incident under the current administration. The Justice Department filed a brief in the Supreme Court, advocating the position eventually taken by the majority. And the Justice Department wasted no time in stating that other civil rights laws should also be limited. Previously, the department hailed a Supreme Court decision as sounding the death knell for affirmative action programs (*Firefighters Union* v. *Stotts*). It is painfully obvious that the Justice Department under this administration moves more quickly to undo the civil rights laws than it does to enforce them. The *Grove City* decision has already resulted in the Justice Department's abandonment of more than 60 civil rights cases involving educational institutions. More are being reviewed. It is likely that actions to enforce the other civil rights laws will also be abandoned. The victims of discrimination will be left without a federal remedy, while the perpetrators of discrimination will continue to receive financial assistance.

Clearly, this is an unacceptable state of the law. Can any responsible American speak out in favor of sex discrimination in education? In favor of racial discrimination in any activity? Can any responsible person advocate discrimination against another on the basis of handicap or age? Of course not. Can we then allow—or worse, can we require—the federal government to ignore or to countenance discrimination by a recipient of federal funding, because the discrimination has been carefully limited to activities which do not receive federal monies? Again, the answer must be a resounding no, if we are to preserve the gains of minorities, women, the handicapped and the aging in their struggles to achieve equality of treatment in our society.

The Civil Rights Restoration Act will prevent *Grove City* from having any further impact and will help stop the erosion of more than two decades of progress toward ending discrimination. The name of this Bill is most appropriate: it seeks only to restore the law to what most of us in this room thought it was only 13 months ago. The enforcement of the various civil rights acts will not be expanded beyond what it has been under past administrations, of both political parties. Simply stated, this Bill would require that a recipient of federal financial assistance refrain from illegal discrimination in any of its activities. The social good of such a requirement is beyond debate by responsible persons: the unfairness of discrimination based on sex, race, national origin, handicap or age is no longer questioned. The debate, if there is need for any, would more properly be centered on the means of enforcement, if any change were being proposed. But the Civil Rights Restoration Act does not seek a revolution in enforcement, but rather preserves the enforcement techniques currently available. The withholding of federal funds remains the sanction of last resort, and remains limited to funds used to support discriminatory activity. Federally funded activities not tainted by illegal discrimination will not be threatened. Thus larger recipients of federal financial assistance—the states, large cities, diversified educational institutions, diversified corporations—need not fear a catastrophic withdrawal of federal support from all their various programs, due to a problem in only one activity. Indeed, if a recipient fulfills its moral and social obligations to refrain from discriminatory actions, the withdrawal of federal funding will never be a problem.

This is not complex legislation, in form or in legal consequence. Passage of the Civil Rights Recovery Act will not mark a new milestone on the road to social justice. But failure to pass this Bill will send the unmistakable message that the Congress of the United States has joined tocitly the current administration in forsaking, and even in undermining, the cause of civil rights. It will be clear to all Americans that women, minorities, the handicapped, the aging can be relegated to inferior status; that the federal government will look the other way when it encounters discrimination, so long as the recipient of federal funds pays for its discrimination from a separate account. The perception of two Americas—one for the privileged, one for the disadvantaged—will be increasingly accurate. This is not an exaggeration, I assure you. Since the decision in *Grove City*, my office has been contacted by numerous individuals and organizations representing these very groups. They view this decision as symptomatic of the federal government's attitudes. They have expressed to me their feelings that the executive and judicial branches of the federal government have forsaken the cause of civil rights, as well as their fear that Congress also will abandon the cause. They considered the legislative efforts to overturn the *Grove City* decision during the last Congress a major test of Congress' commitment; the current Bill has taken on ever greater significance due to the failure of Congress to act last term.

We must stop the erosion of progress in civil rights. We must restore the gains lost under this administration, and prevent any more from being stripped away. Let this process begin with the passage of the Civil Rights Restoration Act.

Mr. **Hayes**. Thank you, Mr. Mayor. You may rest assured that your statement in its entirety will be made a part of the record of this hearing.

I know the time constraints under which you're operating in your very important position, but if you can just for a few minutes permit my colleague here to my right to maybe raise a question or few comments.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Thank you very much, Mr. Hayes. I certainly am happy to see my old friend Harold Washington again before the subcommittee.

Just to refresh your recollection, Mr. Mayor, we were not adversaries all the time during your service on the subcommittee. We worked quite closely at getting the Voting Rights Act extension passed in 1982, and without that kind of bipartisan cooperation, I think that very important civil rights law would have expired in 1982. I think we not only extended it for 25 years but we also strengthened it as well.

Mayor **Washington**. May I just say, Congressman, that without your brilliant, legal analysis of that bill—not in toto, but in part—as we went through it, I am certain the road would have been much more rocky in terms of passing it. Your contribution was magnificent. If I was stinting in my praise originally, let me unstint it now and say that I deeply appreciate it.

Mr. **Sensenbrenner**. The question that I have of you, Mr. Mayor, is the same question that I asked last Monday of Mayor Young when we had a hearing in Atlanta. The coverage of H.R. 700 is considerably narrower in State and local government than it is in the private sector of our economy. For example, under this bill, if one department of the city of Chicago receives Federal funds, it is covered; but the other departments of the city of Chicago who don't receive any Federal funds are not covered. However, in the private sector of our economy, there is corporation-wide coverage, including independent contractors, franchisees, and "any other entity," to use the term of the bill. So, if one function of General Motors or IBM receives Job Training Partnership Act funds, for example, that brings the entire corporation, including those entities that do not receive Federal funding, under the restrictions of the bill.

I am puzzled as to why State and local government is treated more narrowly and whether you support that or not.

Mayor WASHINGTON. Well, I wasn't privy to the formulation of it and I am not certain I understand the rationale for making the distinction. But I can see why there would be a distinction. My inclination is to say that perhaps that is not too bad.

The distinction is simply this: Government, municipal, county, whatever, serves the people. It serves the people with tax dollars which the people pay. It seems to be somewhat more onerous to punish every aspect of government which services people because of recalcitrance or violation of a statute or one part of it, because it is in the public sector serving the public.

In the private sector, however, you have personal gain. You have a corporation-for-profit. It is designed to make that. My idea is that even though we may worship and need the private sector to provide the goods, it doesn't stand in the same suigeneris category of government and should not therefore have the prerogatives of government. That's a distinction which I think does have some merit, and although I can't subscribe to it because my inclination is perhaps to go further, I can see the rationale for it and I am certain it is somewhat in that vein. My research just didn't disclose that dialog or that reason.

Mr. SENSENBRENNER. Let me give you two examples that have been brought before the committee to date. One says that if the "Hardware Hank" store in rural Georgia, which is a franchisee, gets a Small Business Administration loan to build the shops, then all of the other "Hardware Hank" franchisees, which are independent corporations, are covered on a nationwide basis, using the definition that is contained in this bill.

The second example that I could use is that if one General Motors plant gets Job Training Partnership Act funds, then every General Motors plant, including those that do no business with the Government at all, are brought in underneath the provisions of this Act.

The third example is that if an independent contractor, a carpenter or somebody else, who is just advertising for business does do some work for one of the corporations that receives Federal funds, then they are brought in underneath this, too.

Now, the only explanation that has been given to me on why we treat the private sector far more broadly than the public sector is because the mayors and governors and county officials lobby is very influential and we don't want to step on their tail.

Are you lobbying me for that kind of a narrower exemption, so that if the Chicago Police Department gets Federal funds, they're covered, but if the Chicago Health Department doesn't get Federal funds, they aren't?

Mayor WASHINGTON. Well, the way you put the question, I almost have an irresistable impulse to do so, but I won't. [Laughter.]

No, I was not party to the lobbying efforts which made the distinction, but as I said before, I can see a distinction being justified on the basis that the public sector serves the public and you are a bit more cautious in penalizing a whole range of Government activities, whereas the private sector is for personal gain and the loss is not necessarily attendant to the public. I can see that distinction being made.

Mr. SENSENBRENNER. I guess what you're telling me, Mr. Mayor, is that we shouldn't raise the public's taxes to get rid of discrimination and improve access to the handicapped, but it is okay to reduce General Motors' profit.

Mayor WASHINGTON. Well, I didn't make the distinction. I was trying to respond to your question and give a rationale for it. But I suppose when you make distinctions you always run into contradictions and problems. But it seems to me that sometimes distinctions must be made.

I assume that this was sort of a compromise bill, which is neither fish nor fowl, but which was designed to get as broad a scope as was possible, but under the circumstances, as you indicated, there were some political problems which had to be dealt with. As you indicated in your opening remarks, we have to deal with the political problems.

So although I don't subscribe to this limited view—I think it should be broader—I can certainly see why it was limited.

Mr. SENSENBRENNER. Let me say that the distinctions between the public and private sector that are set forth in the bill as introduced do create some significant political problems that, in my opinion, had better be addressed if this bill is not to meet the same fate as its predecessor last year.

I thank you, Mr. Chairman, and yield back the balance of my time.

Mr. HAYES. Mr. Hawkins.

The CHAIRMAN. Quite apart, Mr. Mayor, from the question of coverage, obviously the intent of the sponsors of the bill is to restore the exact conditions that prevailed prior to *Grove City*—no more, no less. But do you not recognize that there are distinctions between governmental entities, such as States and local governments and their agencies and departments on the one hand, and a corporate structure on the other? There is a distinct difference and you can't always treat them in the same manner.

Mayor WASHINGTON. Absolutely. I think it has some merit and I subscribe to that merit. So I was somewhat at first nonplused to make a decision in response to Representative Sensenbrenner, but I can see the distinction does have merit.

The CHAIRMAN. There is also another issue dealt with in your particular statement, and it goes, I think, to the heart of the problem. As you well remember—perhaps I'm a little bit older than you—but we have gone through a period of development in which discrimination today is not the same as discrimination as it was practiced 30 or 40 years ago; today it is more subtle, it's more sophisticated, and no one ever openly attempts to be accused of discrimination. It isn't as acceptable now as it was on previous occasions, and that these subtle distinctions sometimes require different approaches.

There is opposition—and I think you alluded to this in your statement—to this proposal on highly technical grounds. For example, if I indirectly discriminate, or if I receive moneys indirectly, I am not covered. However, the basic notion that we subscribe to is that no one need be covered under these laws if they do not want Federal assistance. But as a condition of receiving any help from the taxpayers' till, you're supposed to subscribe to certain conditions to which you would not, otherwise, be subject. That, to me, is a rather simple idea in our society today, and it would seem to me that the attempt to escape from that situation, from a situation in which you submit yourself to some degree of supervision or oversight, or even conditions, as a result of receiving Federal funds, becomes rather irrational if on the one hand you want to receive the money and yet you want to do what you want to do.

Do you subscribe to that notion?

Mayor **Washington**. I think you put it in a nutshell. I couldn't possibly improve on it, but perhaps just embellish it with a very brief remark to the effect that that's the whole ball game. If you want Federal dollars, in terms of whatever you do with them in a school, if you want Federal dollars in terms of contracts, if you want Federal dollars to promote your business, Federal dollars being taxpayers' dollars, then you have to subscribe to a public policy which says you can't discriminate. That's the logic of the whole panorama of the civil rights laws as I understand it. I subscribe to that logic and I think it's irrefutable.

The **Chairman**. Thank you.

Mayor **Washington**. Thank you very much, gentlemen. It's been a real pleasure. Chicago is yours, as usual.

Mr. **Hayes**. Mr. Mayor, I want to thank you for fitting us into your busy schedule this morning. Let me assure you that whatever help you can give, in trying to encourage some of your former colleagues to vote for H.R. 700, would be greatly appreciated. Thank you very much for coming.

Mayor **Washington**. Thank you, sir.

Mr. **Hayes**. I would like to call the next panel, Miss Rosetta Daylie, president, American Federation of State, County & Municipal Employees, Council 31; Miss Margaret Blackshere, director of legislation, Illinois Federation of Teachers; Raymond A. Bolden, attorney, branch president of the NAACP from Joliet, IL; and Rev. George E. Riddick, staff vice president, Operation PUSH, Chicago.

I want to say that the Urban League, which is listed under the same panel, we were supposed to have testimony from the president of that organization. He has advised me that he could not make it but they have submitted a statement to be entered into the record which clearly delineates the Urban League's position with respect to H.R. 700.

[The letter and prepared statement of James Compton follow:]

CHICAGO
URBAN LEAGUE
4510 S. MICHIGAN AVE./CHICAGO, IL 60653/(312) 285-5800

March 15, 1985

The Honorable Don Edwards
Chairman
U. S. House of Representatives
Subcommittee on Civil and Constitutional
Rights
House Annex # 1
Room 806
Washington, D. C. 20515

Dear Congressman Edwards:

I regret my inability to personally appear before your subcommittee as it convenes hearings in Chicago. I would be appreciative, however, if my written testimony is entered and made a part of the record.

You may be assured of my continuing support of your diligent efforts to obtain passage of the Civil Rights Restoration Act of 1985.

My sincere thanks for your kind invitation.

Sincerely,

James W. Compton
President

JWC:id

cc: Hon. Charles A. Hayes
Hon. Augustus F. Hawkins

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PREPARED STATEMENT OF JAMES W. COMPTON, PRESIDENT, CHICAGO URBAN LEAGUE

IT IS MY GREAT HONOR AND PERSONAL PRIVILEGE TO BE AFFORDED THE OPPORTUNITY TO PRESENT TESTIMONY TO THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE HOUSE JUDICIARY COMMITTEE AND THE FULL COMMITTEE ON EDUCATION AND LABOR.

IN ACCORDANCE WITH YOUR KIND INVITATION, I WILL DISCUSS H.R. 700, THE CIVIL RIGHTS RESTORATION ACT OF 1985.

BEFORE I BEGIN THE SUBSTANTIVE PORTION OF MY TESTIMONY, I WOULD SIMPLY STATE THAT THE CHICAGO URBAN LEAGUE IS THE LARGEST OF 113 AFFILIATES OF THE NATIONAL URBAN LEAGUE. OVER THE 69 YEARS OF OUR EXISTENCE IN THE CHICAGO COMMUNITY, THE LEAGUE HAS ADVOCATED THE IDEAL OF AN OPEN, INTEGRATED AND PLURALISTIC SOCIETY.

THROUGH A VARIETY OF DIRECT DELIVERY AND JOB TRAINING PROGRAMS AND RESEARCH, WE HAVE FIRMLY COMMITTED OUR ORGANIZATIONAL STRENGTH AND RESOURCES TO THOSE MOST VICTIMIZED BY OUR NATION'S PERSISTENT FAILURE TO ADDRESS THE ROOT CAUSES OF RACISM AND CORRECT THE PAST AND CONTINUING EFFECTS OF PREJUDICE AND DISCRIMINATION.

THE U.S. SUPREME COURT'S DECISION IN THE CASE OF GROVE CITY COLLEGE V. BELL (CITATION OMITTED) PLACED DRASTIC AND DANGEROUS LIMITATIONS ON TITLE IX'S PROHIBITION AGAINST SEX DISCRIMINATION IN ANY EDUCATIONAL "PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE."

WHILE THE COURT WAS AWARE THAT GROVE CITY COLLEGE WAS A RECIPIENT OF FEDERAL FUNDS, ON ACCOUNT OF STUDENTS RECEIVING BASIC EDUCATION OPPORTUNITY GRANTS (BEOG), THE COURT, NEVERTHELESS, DEFINED TITLE IX'S "PROGRAM OR ACTIVITY" LANGUAGE TO COVER ONLY THE SCHOOL'S FINANCIAL AID PROGRAM TO STUDENTS RATHER THAN THE ENTIRE INSTITUTION.

THE COURT'S MISINFORMED AND UNNECESSARILY NARROW INTERPRETATION OF THE LAW DEFIES THE JUDICIAL WISDOM OF BROADLY CONSTRUING LEGISLATIVE LANGUAGE IN MATTERS OF PUBLIC POLICY. THIS LIBERAL APPROACH TO CONSTRUCTION IS BASED UPON THE MOST FUNDAMENTAL AND SOUND LOGIC THAT IT IS NOT POSSIBLE TO FORESEE EVERY EVENTUALITY, PLAN FOR EVERY CONTINGENCY OR LEGISLATE INTO EXISTENCE EVERY DESIRABLE END.

THUS, FORMAL LAW IS GIVEN FORCE AND EFFECT IN THE CONTEXT OF ALL OF THE SURROUNDING CIRCUMSTANCES AND AN APPRECIATION OF THE HARM TO BE MITIGATED, PREVENTED OR CURED.

IN THIS INSTANCE, THE COURT'S MYOPIC VIEW HAS VULGARIZED THE CONGRESSIONAL INTENT TO OUTLAW DISCRMINATION IN ALL OF ITS FORMS. WITHOUT REHABILITATIVE LEGISLATION, THERE IS A CLEAR AND PRESENT DANGER THAT CIVIL RIGHTS STATUES OF LONG-STANDING WOULD BE EXPOSED TO A GENERAL FRONTAL ATTACK.

TITLE IX REPRESENTS BUT ONE OF SEVERAL MAJOR CIVIL RIGHTS LAWS PROHIBITING DISCRIMINATION BY THOSE WHO ENJOY THE PRIVILEGE AND BENEFITS OF THE PUBLIC TREASURY. ESPECIALLY VULNERABLE TO CHALLENGES SIMILAR TO THE ONE IN GROVE CITY COLLEGE ARE: TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, WHICH WAS THE MODEL FOR TITLE IX: SECTION 504 OF THE REHABILITATION ACT OF 1973; AND THE AGE DISCRIMINATION ACT OF 1975, ALL OF WHICH CONTAIN THE IDENTICAL "PROGRAM OR ACTIVITY" LANGUAGE AND, THEREFORE, ARE SUBJECT TO THE PRECEDENT ESTABLISHED IN GROVE CITY COLLEGE.

IT IS INSTRUCTIVE TO NOTE THE JUBILATION OF HIGH-RANKING REAGAN ADMINISTRATION OFFICIALS, AND OTHER VOCAL CRITICS OF ANY AND ALL PLANS TO OUTLAW DISCRIMINATION IN THE UNITED STATES, WHEN THE DECISION WAS HANDED DOWN.

IT PROVIDES THE OMINOUS SIGNAL THAT THE JUSTICE DEPARTMENT AND THE MISBRANDED U.S. COMMISSION ON CIVIL RIGHTS INTEND TO EXTEND THE BATTLEGROUND BEYOND EDUCATIONAL INSTITUTIONS.

CLARIFYING PROVISIONS OF H.R. 700 MUST EFFECTIVELY RESTORE BREADTH OF COVERAGE TO THE "PROGRAM OR ACTIVITY" LANGUAGE, WHILE UNAMBIGUOUSLY AFFIRMING THE PRINCIPLE THAT ANY RECIPIENT OF GOVERNMENT FUNDING IS SUBJECT TO THE PUBLIC POLICY THAT ENJOINS DISCRIMINATION.

THE CIVIL RIGHTS RESTORATION ACT OF 1985 IS TRULY RESTORATIVE IN THE SENSE THAT IT CREATES NO NOVEL OR NEW LEGAL OBLIGATIONS FOR STATE OR LOCAL GOVERNMENTS, UNIVERSITIES AND SYSTEMS OF HIGHER EDUCATION, LOCAL EDUCATIONAL SYSTEMS, BUSINESS ENTITIES, OR INDIVIDUALS RECEIVING FEDERAL FINANCIAL ASSISTANCE.

MY SUPPORT FOR THE ENTIRE LEGISLATIVE PACKAGE IS BASED UPON ITS RATIONAL, SOUND, DISCREET, AND PRACTICAL APPROACH TO BROAD INSTITUTION-WIDE COVERAGE COUPLED WITH NARROWLY TARGETED FUND TERMINATION IN THE ENFORCEMENT SECTION OF EACH STATUTE.

ALTHOUGH FUND TERMINATION WILL REMAIN A REMEDY OF LAST RESORT, ITS DETERRENT EFFECT WOULD BE A PRIMARY TOOL IN AIDING COMPLIANCE.

AS I CLOSE, I AM FORCED TO WONDER WHETHER HISTORY IS NOW REPEATING ITSELF. THE CIVIL WAR AMENDMENTS GUARANTEED FULL RIGHTS OF CITIZENSHIP TO FORMER SLAVES OVER A CENTURY AGO. THE FEDERAL GOVERNMENT WAS CHARGED WITH ENFORCING A CONSTITUTIONAL COMMITMENT TO ENSURE THAT THESE RIGHTS BECAME A REALITY.

THROUGHOUT THE HISTORY OF CIVIL RIGHTS, THE FEDERAL GOVERNMENT HAS FOLLOWED EVERY PERIOD OF PROMISE AND HOPE WITH AN ERA OF RETRENCHMENT AND RENEWED DISCRIMINATION.

IT MUST BE RECALLED THAT THE OPTIMISM CREATED BY BROWN V. BOARD OF EDUCATION IN 1954 WAS ACCOMPANIED BY LOUD CRIES ABOUT THE SUPREME COURT BECOMING UNNECESSARILY ENTANGLED IN THE FIELD OF SOCIAL ENGINEERING. THE PROPHETS OF IMMINENT CATASTROPHE PUBLISHED IN THEIR SOUTHERN MANIFESTO OF 1956 THE NOTION THAT "ALL DELIBERATE SPEED" WAS SO RADICAL AN APPROACH TO RACE RELATIONS THAT IRREPARABLE HARM WOULD BEFALL THE BODY POLITIC AS WELL AS THE NATION'S SOCIAL FABRIC.

BUT BEGINNING IN 1957, CONGRESS ASSUMED INCREASING RESPONSIBILITY FOR IMPROVING THE DESPERATE CLIMATE OF RACE RELATIONS IN THE UNITED STATES.

THIS NEW CONCERN CULMINATED IN THE PASSAGE OF THE CIVIL RIGHTS ACT OF 1964, MORE THAN 80 YEARS AFTER THE CIVIL RIGHTS ACT OF 1875, WAS DECLARED TO BE UNCONSTITUTIONAL. THE FINAL VERSION OF THE ACT WAS NOT MERELY COMPREHENSIVE IN SCOPE, BUT INSTRUCTIVE ALSO OF THE VAST CATALOGUE OF ELEMENTARY DENIALS OF HUMAN RIGHTS PERSISTING 100 YEARS AFTER RATIFICATION OF THE 13TH AMENDMENT LEGALLY ABOLISHED SLAVERY.

OUR HISTORY IS REPLETE WITH STATUTORY PROMISES AND PRONOUNCEMENTS AND DECLARATIONS OF THEORETICAL LEGAL EQUALITY. THE REALITIES OF EQUAL PROTECTION BEFORE THE LAW, OPPORTUNITIES FOR QUALITY EDUCATION, EMPLOYMENT, HOUSING FIT FOR HUMAN HABITATION, AND TO ADVANCE TO THE LIMITS OF ONE'S CAPABILITIES, HAVE REMAINED BEYOND THE REACH OF A SIGNIFICANT SEGMENT OF MINORITY GROUP CITIZENS.

WHILE THERE ARE THOSE BOLD ENOUGH TO ASSERT THAT THE BURDEN OF RACE IS NO LONGER A PERTINENT ISSUE IN THE FORMULATION OF PUBLIC POLICY, IT IS CLEAR, FROM STATISTICAL EVIDENCE AND OBSERVATION, THAT DISCRIMINATION AND SEGREGATION HAVE NOT VANISHED FROM AMERICAN LIFE.

CIVIL RIGHTS ENFORCEMENT EFFORTS ARE THE ONLY TRUE AND TANGIBLE EXPRESSIONS OF THE NATIONAL WILL TO HONOR HISTORICAL PROMISES AND CONSTITUTIONAL PRINCIPLES. TODAY, I RENEW THE APPEAL OF PRESIDENT LYNDON JOHNSON IN HIS 1964 STATE OF THE UNION ADDRESS TO CONGRESS, BECAUSE SOME TWO DECADES LATER, MANY OF THE HISTORICAL CONSEQUENCES AND RACIAL BARRIERS ARE YET TO BE CONQUERED:

> "LET THIS SESSION OF CONGRESS BE KNOWN AS THE SESSION WHICH DID MORE FOR CIVIL RIGHTS THAN THE LAST HUNDRED SESSIONS COMBINED... AS THE SESSION WHICH DECLARED ALL-OUT WAR ON HUMAN POVERY AND UNEMPLOYMENT...
>
> [M]ANY AMERICANS LIVE ON THE OUTSKIRTS OF HOPE--SOME BECAUSE OF THEIR POVERTY, AND SOME BECAUSE OF THEIR COLOR, AND ALL TOO MANY BECAUSE OF BOTH."

THANK YOU, ONCE AGAIN, FOR THE OPPORTUNITY TO PRESENT TESTIMONY.

Mr. HAYES. Our procedure will be to have you present your statement. You can highlight it or present it in its entirety, whatever you choose. But you may rest assured that the entire statement will be made a part of the record of this hearing. Once each of you have given your statement, then the committee may want to subject you to some questions or comments.

Miss Daylie.

STATEMENT OF ROSETTA DAYLIE, PRESIDENT, COUNCIL 31, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; MARGARET BLACKSHERE, DIRECTOR OF LEGISLATION, ILLINOIS FEDERATION OF TEACHERS; RAYMOND A. BOLDEN, ESQ., BRANCH PRESIDENT, NAACP, JOLIET, IL; AND REV. GEORGE E. RIDDICK, STAFF VICE PRESIDENT, OPERATION PUSH, A PANEL

Ms. DAYLIE. Mr. Chairman and distinguished members of the Committee on Education and Labor and the Committee on the Judiciary. I am Rosetta Daylie. I am here representing the American Federation of State, County & Municipal Employees, better known as AFSCME, a labor union representing public employees across the Nation. Currently, I serve as president of AFSCME Illinois Council 31, which is located here in Chicago. I appreciate the opportunity to testify in support of H.R. 700, the Civil Rights Restoration Act of 1985.

This legislation is necessary to overturn the Supreme Court's decision in the *Grove City College* v. *Bell* case, which was decided in 1984. In that decision the Court narrowed the reach of title IX of the 1972 Education Act Amendments, which bars sex discrimination in any program or activity receiving Federal aid, by ruling that the general ban on sex discrimination does not apply to all activities of a recipient institution but only to the particular program receiving funds.

Clearly, that is not the interpretation the Congress intended in passing title IX. The Congress intended to prohibit sex discrimination in all programs and activities of an institution receiving Federal funds.

Because of the Court's decision, schools throughout the country are free to discriminate in many of their course offerings, extra curricular activities, and student programs. H.R. 700 is necessary to clarify that the entire recipient institution is subject to title IX.

But even more horrifying than the Court's interpretation of title IX is the decision's staggering legacy with respect to other civil rights laws. The Court's narrowing of the statutory definition of program or activity has severe implications for other civil rights statutes that contain the same language as title IX.

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in all federally-assisted programs or activities. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against the handicapped in programs or activities receiving Federal assistance. And the Age Discrimination Act of 1975 prohibits discrimination based on age in programs or activities receiving Federal assistance.

Indeed, the Reagan administration has already indicated that it may utilize a similar analysis in applying the *Grove City* holding to these civil rights laws. It is therefore crucial that all four of these laws are covered in H.R. 700 to restore these statutes to the broad scope of coverage and protection which Congress originally intended and which characterized their administration for over 20 years.

AFSCME is particularly supportive of this legislative effort to halt Federal financing of discrimination because our union, too, has played a major role in bringing discriminatory practices to a halt. For example, AFSCME is a leading advocate for rights of women workers. With guidance from our International Women's Advisory Committee, the union has been helping women to get out of dead-end jobs, fight sexual harrassment, meet child care needs, and develop leadership skills. Most important, though, has been AFSCME's commitment to pay equity, which is crucial to the economic well-being of women.

Our most significant accomplishment in the pay equity area occurred in 1983 when AFSCME won a landmark pay equity lawsuit in the State of Washington. Though pay equity is covered by title VII of the Civil Rights Act, we mention our efforts on this issue to inform the committee members of how important the eradication of sex discrimination is to our union.

Additionally, I would like to discuss the effects the *Grove City* decision will have on section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against the handicapped in programs or activities receiving Federal assistance. The AFSCME Advisory Committee on the Rights of the Disabled was created by the AFSCME International Executive Board in a resolution which called for AFSCME and its affiliate councils and local unions to support the inclusion in their training of staff, shop stewards and other union representatives, programs which will educate them to enforce existing laws and contract provisions that protect the right of AFSCME's disabled members.

There are close to 40 million permanently disabled persons in the United States; 12 million of these individuals are currently employed. AFSCME members who are disabled work as welfare case workers, rehabilitation workers, clerical employees, hospital workers, librarians, social workers, computer programmers, teachers, groundskeepers, and in many other occupations.

The only thing our disabled member demand is an equal chance to lead productive, fulfilling lives, free from discrimination, intentional or accidental. Section 504 of the Rehabilitation Act of 1973 gave us this chance. It must not be taken away.

AFSCME has fought hard and will continue to fight hard to secure and expand basic human rights for all Americans. We have made substantial progress in this country in reducing discrimination because of race, sex, ability, or age. But we still have a long way to go. Let's not start moving backward. We ask you to quickly pass the Civil Rights Restoration Act of 1985.

Thank you for this opportunity to testify.

[The prepared statement of Rosetta Daylie follows:]

PREPARED STATEMENT OF ROSETTA DAYLIE, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES

TESTIMONY OF AFSCME ON H.R. 700, THE CIVIL RIGHTS RESTORATION ACT OF 1985

Mr. Chairman and distinguished members of the Committee on Education and Labor and the Committee on the Judiciary. I am Rosetta Daylie. I am here representing the American Federation of State, County and Municipal Employees (AFSCME),a labor union representing public employees across the nation. Currently, I serve as President of AFSCME Council 31, which is located here in Chicago. I appreciate the opportunity to testify in support of H.R. 700, the "Civil Rights Restoration Act of 1985".

This legislation is necessary to overturn the Supreme Court's decision in the Grove City College v. Bell case which was decided in 1984. In that decision the Court narrowed the reach of Title IX of the 1972 Education Act Amendments, which bars sex discrimination in any "program or activity" receiving federal aid, by ruling that the general ban on sex discrimination does not apply to all activities of a recipient institution, but only to the particular program receiving funds. Clearly, that is not the interpretation the Congress intended in passing Title IX. The Congress intended to prohibit sex discrimination in all programs and activities of an institution receiving federal funds. Because of the Court's decision, schools throughout the country are free to discriminate in many of their course offerings, extra curricular activities, and student programs.

H.R. 700 is necessary to clarify that the entire recipient institution is subject to Title IX.

But even more horrifying than the Court's interpretation of Title IX is the decision's staggering legacy with respect to other Civil Rights laws. The Court's narrowing of the statutory definition of "program or activity" has severe implications for other civil rights statutes that contain the same language as Title IX. Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color or national origin in all federally-assisted programs or activities. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against the handicapped in programs or activities receiving federal assistance. And the Age Discrimination Act of 1975 prohibits discrimination based on age in programs or activities receiving federal assistance. Indeed, the Reagan Administration has already indicated that it may utilize a similar analysis in applying the Grove City holding to these civil rights laws. It is therefore crucial that all four of these laws are covered in H.R. 700 to restore these statutes to the broad scope of coverage and protection which Congress originally intended and which characterized their administration for over 20 years.

AFSCME is particularly supportive of this legislative effort to halt federal financing of discrimination because our union, too, has played a major role in bringing discriminatory practices to a halt. For example, AFSCME is a leading advocate for rights of women workers. With guidance from our International Women's Advisory Committee, the union has been helping women get out of dead-end jobs, fight sexual harrassment, meet child care needs and develop leadership skills. Most important, though, has been AFSCME's commitment to pay equity, which is critical to the economic well-being of women. Our most significant accomplishment in the pay equity area occurred in 1983 when AFSCME won a landmark pay equity lawsuit in the State of Washington. Though pay equity is covered by Title VII of the Civil Rights Act, we mention our efforts on this issue to inform the Committee members of how important the eradication of sex discrimination is to our union.

The increased educational opportunities that Title IX have brought to women are documented. Since Title IX was passed, the number of women participating in intercollegiate athletics has increased. We saw many of these athletes compete in the 1984 Olympics. Before Title IX, no colleges or universities offered athletic scholarships to women; but by 1982, 15,000 sports scholarships were offered to women. Significant increases can also be noted in the percentage of women in vocational education, the percentage of women in two and four year colleges, and the percentage of women earning graduate and professional degrees granted in traditionally male fields.

While the number of women seeking educational opportunities has increased, there is still room for improvement. Indeed if the door is shut on equal educational opportunity for women, it will affect not only educational achievement but the ability of women to gain certain skills and knowledge that will directly affect their position in the workplace.

Additionally, I would also like to discuss the effects the Grove City decision will have on Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination against the handicapped in programs or activities receiving federal assistance. The AFSCME Advisory Committee on the Rights of the Disabled was created by the AFSCME International Executive Board in a resolution which called for "AFSCME and its affiliate councils and local unions to support the inclusion in their training of staff, shop stewards and other union representatives, programs which will educate them to enforce existing laws and contract provisions that protect the right of AFSCME's disabled members." One of the first activities of the Committee was to produce a special series in the AFSCME newspaper, the Public Employee and to publish "Fighting for the Rights of Disabled Employees," an AFSCME guide for dealing with the problems that our disabled members face.

At the time the newspaper articles and the handbook were published, we had no idea what kind of response to expect. Yet practically by return mail, we were swamped with letters of appreciation, requests for more information and requests for assistance in the problems that disabled workers face every day when they go to their jobs.

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There are close to 40 million permanently disabled persons in the United States. Twelve million of these individuals are currently employed. AFSCME members who are disabled work as welfare case workers, rehabilitation workers, clerical employees, hospital workers, librarians, social workers, computer programmers, teachers, groundskeepers and in many other occupations.

Our disabled members have often had an extremely difficult time finding jobs, and when they do find work, they often find themselves paid less than non-disabled employees doing the same work, trapped in unchallenging, dead-end jobs that do not match their abilities, and unable to take advantage of job advancement opportunities that are available to non-disabled employees.

What gains our members have made in terms of responable accommodation have been through a combination of individual determination, hard work through the union and, perhaps most important by using Secton 504 to force their employers to give them the same opportunity that any non-disabled person has to do the job they were trained to do.

After the Grove City decision, as a practical matter, the discrimination previously experienced by the disabled may again become a common practice. Any recipient of federal financial assistance may be able to shield itself from Section 504's coverage by simply directing federal assistance to some programs and not others. Our members who have insisted on their right to have ramps installed, their offices moved, special reading machines and telephones are valuable in order to do the job they are qualified to do, must now view these accommodations not as their legal right, but as privileges which can be taken away at any time. Those of our members who are just coming into the workforce, or who have recently become disabled will have little hope of escaping discrimination that will make them second class citizens of this country for the rest of their lives.

Let me give you some examples of where Section 504 has enabled disabled AFSCME members to do the jobs they are qualified to do. In California, a blind social worker in a state hospital, who is also an AFSCME steward, won the right to have a reader hired for himself and three blind co-workers. The basis for this action was that the four employees possessed the "essential qualifications" for the job and the employer was therefore required to make a "reasonable accommodation." Had Section 504 not applied in this case, these four workers and all their valuable education, training and experience would have been wasted.

In New York, an AFSCME local won the right for a member with dyslexia to take a tape recorded civil service examination. Another member received a portable oxygen tank he needed.

A disability is not an inability unless the artificial barrier of discrimination is used to trip us up. We are not saying that we need special favors. In fact, even with Section

504, the challenges that disabled persons must face every day would seem insurmountable to most non-disabled persons.

The only thing that we demand is an equal chance to lead productive, fulfilling lives, free from the discrimination --intentional or accidental. Section 504 of the Rehabilitation Act of 1973 gave us this chance. It must not be taken away.

AFSCME has fought hard and will continue to fight hard to secure and expand basic human rights for all Americans. We have made substantial progress in this country in reducing discrimination because of race, sex, ability, or age. But we still have a long way to go. Let's not start moving backwards. We ask you to quickly pass the Civil Rights Restoration Act of 1985.

Thank you for this opportunity to testify.

3/11/85

Mr. HAYES. Miss Blackshere.

Ms. BLACKSHERE. Mr. Chairman and members of the committee, thank you for the opportunity to appear at this hearing, and welcome to Chicago.

As legislative director of the Illinois Federation of Teachers, I am here today to lend my strong support for the Civil Rights Restoration Act of 1985 and to briefly share with you the views of the American Federation of Teachers as to why it is imperative that this act become the law of the land.

The American Federation of Teachers is in a unique position to endorse this legislation. We represent more than half-a-million teachers in primary and secondary schools across the country. We are the largest representative of college faculty members in the United States, with more than 80,000 members teaching in our Nation's colleges and universities. The AFT also represents thousands of State employees and health care professionals who serve in our hospitals and health facilities.

Most importantly, our union acts as an advocate of policies which help our Nation's children. We have a special obligation to students, an obligation that includes providing them with a good education, pushing them to excellence, and protecting their interests when they are under assault. In my view, the Supreme Court decision in the *Grove City College* v. *Bell* is a direct frontal assault on the educational opportunities of millions of students. The only proper response to this assault is the swift passage of the Civil Rights Restoration Act of 1985.

The *Grove City* case was wrongly decided. It defies congressional intent, narrows the coverage of title IX of the Education amendments of 1972, and seriously jeopardizes educational equity for an entire generation of students and teachers. In the strict sense, *Grove City* narrows Federal protection against sex discrimination so that it is limited to specific education programs or activities that directly receive Federal funds. The AFT believes that Congress intended title IX to apply to an entire institution. If one department of an educational institution is not in compliance with the law, then the entire institution should be considered out of compliance. It is difficult to see how any other interpretation would be consistent with the purpose of title IX.

Without total coverage, institutions would be allowed to pick and choose Federal aid programs, but ignore the requirements for equal access and protection of women students and faculty which is incorporated in title IX. The existing ruling is an open invitation for institutions who wish to benefit from Federal aid but ignore the conditions that guarantee fairness in the use of Federal funds.

In a broader sense, the impact of the decision is even more menacing. When the reasoning of *Grove City* is applied, as it has been to the other civil rights laws which prohibit those who receive Federal funds from discriminating against minorities, the handicapped and the elderly, we are faced with a frightening reality: The Federal Government is sanctioning and subsidizing educational and noneducational institutions which discriminate. It is a reality we can ill-afford to tolerate and which will only proliferate if the Civil Rights Act of 1985 is not enacted.

As educators, we are primarily concerned with educational programs, but we fully recognize that a student's education extends far beyond the classroom. Neither the student, nor society in general, benefits when any institution or facility overtly encourages or passively permits the unequal treatment of people. Students lose valuable educational experiences which cannot be recovered and the loss to society in terms of ideas, ideals, and progress is immeasurable. As teachers and instructors, we face the prospect of having our own employment and educational opportunities limited or fully curtailed.

Because of *Grove City,* civil rights enforcement has been severely restricted and, if the decision is allowed to stand, the potential for discrimination is virtually limitless. The results are often absurd. Who among us is prepared to tell our Olympic athletes, who brought us great national pride last year, that because of their race or sex they may not be able to participate in certain sports activities in their universities, or even at future Olympic events, because they have not had the opportunity for inter-collegiate or high school competition.

The Civil Rights Restoration Act of 1985 is a sound piece of legislation which will clarify the intent of Congress and restore the principal civil rights statutes to the broad scope and coverage that was originally intended by Congress and has marked their enforcement until last year.

This is also cost-effective legislation. It imposes no additional obligation on those who receive Federal financing and it will impose no additional burden on the Federal Treasury. In these days of budget cuts, including massive cuts in student aid and educational programs, and Federal deficit concerns, Members of Congress should be anxious to pass legislation which will protect the general welfare without adding to the Federal red ink.

We, at the AFT, hope the message coming out of these hearings and this legislation will be loud and clear: Federal funding of discrimination will not be tolerated in this country. We will not go back to the time when women athletes were a rarity. We will not return to the time when the rights of the handicapped were invisible. We will not return to the time when racial discrimination was a national disgrace.

Thank you.

Mr. HAYES. Very good.

The next witness, Mr. Bolden.

Mr. BOLDEN. Thank you, Mr. Chairman. My name is Raymond Bolden and I am president of the Joliet branch of the NAACP. I though if there was going to be a congressional hearing on civil rights—I notice this committee has been all around the country—that it might be a good idea to hear from the hinterlands of Illinois, so I thought I would drive up and talk with you today about what we believe is going on here with this *Grove City* College case.

That decision has raised some serious concerns for Americans who believe that the hard-won gains in civil rights over the past 20 years have been placed in jeopardy.

In giving a narrow interpretation of coverage under title IX in that case, the Court cast doubt on similar language and its formerly broad interpretation under title VI of the Civil Rights Act, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

That interpretation creates the unthinkable possibility that an agency or institution receiving Federal funds may practice discrimination banned by the aforementioned laws as long as those funds are not raceable to the particular activity practicing that discrimination. Moreover, an agency or institution is not affected by the law, only that activity within it practicing discrimination is affected.

At the time of the passage of such laws, if anyone had suggested that that was the aim or the intent of Congress, they probably would not have been passed.

Not only does that interpretation offend the intent of Congress, but it also offends our whole sense of justice and fairness. It offends a public policy that has now long been established which is that the Federal Government will not support any activity, directly or indirectly, in whole or in part, that discriminates on the basis of race, color, religion, sex, age, or physical handicap.

The National Association for the Advancement of Colored People has taken a firm stand in support of H.R. 700, and as a representative of one of its branches from Joliet, IL, I have come to urge its passage.

We believe the bill returns the four laws previously mentioned the scope for which they were originally intended and should leave no doubt in the minds of any future jurists who may be called upon to interpret them. Unless such action is taken, it is more than just likely that similar interpretations as seen in *Grove City* will be forthcoming.

It is important to understand that the *Grove City* decision, along with the Justice Department's actions involving affirmative action, has had a chilling effect on those in Government and out of Government in their efforts to deal with perceived racism. Resistance to complaints of discrimination is increasing because of a widely-held belief that the present administration will not enforce the laws dealing with civil rights—or at least will do little more than give lip service to them. Local officials have been made to feel comfortable ignoring civil rights groups which challenge certain policies and procedures that are inimical to minorities.

Moreover, a dark shadow has been cast over the efforts to end bias of every kind in this Nation, as well as its effects, by the *Grove City* case. The shadow is made darker by the Justice Department and now the U.S. Civil Rights Commission as they embark along parallel lines to undo many of our gains of the past, and by their words and deeds give aid and comfort to those who would turn back the clock to the so-called good old days.

Therefore, it rests squarely on the shoulders of Congress to take the initiative to assure the people of this Nation that their civil rights will not be denied them, that Federal funds will not be used where their civil rights are denied them, and that their Government will stand behind them when their civil rights are denied them.

Thank you for your interest and for allowing me to appear.

Mr. HAYES. Thank you.

We now welcome Reverend Riddick to the panel, vice-president of Operation PUSH.

Reverend **Riddick**. Thank you very much, Mr. Chairman. We want to thank the committee for both agreeing to bring its panel to the city of Chicago in discussing this very significant and crucial issue, the area of civil rights and affirmative action.

In 1964 the then President, Lyndon B. Johnson, set out on a course "To fulfill these rights", establishing as highest priority the enactment of legislation that would grant full citizenship rights to black and other minority citizens in this nation. He considered this not only a mandate of the 1964 elections, but the morally right and just course to direct the Nation to assume.

That same President noted in a very remarkable observation after he had left the Presidency that the Nation must not only address the issue of equality of opportunity, but must seek to address the question of equality of results.

For some, this was a far-fetched egalitarian notion with radical implications, but the very simple premise was that the Nation must acknowledge a legacy at least 12 generations in length, imposed by a system of racism which frequently imposed the double jeopardy of color and poverty, and to acknowledge that the effects of that system, over a 300-year period, could only be eradicated by extraordinary and compensatory measures designed to provide not only equal but equitable opportunities for disadvantaged minorities and for women in our nation.

First, it is important to remember that affirmative action is not new, nor is it applied merely to minorities and females in this society. It was first applied to employees seeking to organize a union in one of the Nation's leading bus lines. But more to the point, seniority systems are affirmative action programs; tenure is a form of affirmative action; and even the national draft in football is a form of affirmative action system.

This bill, the Civil Rights Restoration Act of 1985, is focused less on change than on bolstering and reinforcing the enforcement mechanisms and particularly the sanctions effective under titles VI, IX, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Operations of a department or agency of a State or local government receiving Federal funds are covered; individual universities and systems of higher education, such as State university systems, are covered. We are particularly interested in this provision, since it has been the practice in some States to exempt the State university system and its member colleges or universities from participation in "set aside" programs. State legislators will feel greater assurance in seeking to remove such exemptions should this legislation be enacted.

Local educational agencies and systems, when receiving any Federal funds, are covered. Any corporation, partnership or other private organizations receiving Federal funds or financial assistance must abide by the provisions of this law. These areas, plus the programs that would be encompassed in the scope of the legislation, would provide a meaningful forthright step in the prohibition of discrimination. It would meet the spirit of the 1960's legislation and also fulfill the promises of the reconstruction legislation so ruthlessly decimated in the wake of the post-Reconstruction era begun, interestingly enough, in the 1880's.

The point is, we must come to terms with the dilemma of racial equality or we will never be able to remove it and replace it with structures assuring equity for all.

The administration has constructed a pincer's movement that involves demolishing equal access programs on the one hand and imposing devastating budget cuts on the other. It is interesting, and should not escape us, that the conduit for these actions have been institutions of education. For it is agreed that education has been the passport for future economic and social independence and viability. There have been significant declines in college enrollment among blacks. It is estimated that there has been between 20- and 25 percent decline in enrollments for black Americans. A New York Times survey of February noted that in some leading eastern colleges the drop between 1977 and 1985 has been precipitous.

The effects have been notable. While black median income in relation to white was 50 percent in 1960 and 60 percent in 1970, it was 56 percent in 1984. Even more noticeable is to use the actual dollar amount since in 1964 the gap was $9,700; in 1974 it was $10,913. By 1983 the dollar gap in median family income between whites and blacks had swelled to $11,251, or an amount equal to the per capita income of working black males. Reports of black progress have completely overlooked these glaring indices of significant retrogression.

We must understand that affirmative action programs are essential precisely because many programs designed to reduce disparities between racial groups—to quote a recent article from Focus, the Journal of the Joint Center for Political Studies—do not necessarily truncate the socio-economic pyramid. Unless there are more programs acknowledging the frozen-in disparities that have impeded the career paths and participation of blacks, other minorities and females, and unless there is a direct commitment addressing the "but for wrongful treatment" issue posed in cases like *Franks* v. *Bowman* on a broader scale, as is possible in the educational arena, affirmative action will prove little more than illusory.

We must understand that this goal is set within the framework of an investment, since to close the income gap now ranging between 42 and 60 percent, and the median family income gap between blacks and whites now 37 percent, represents the placement of billions of dollars in this economy. The programs we are seeking to defend under title IX and Title VII are essential steps at a very critical junction in assuring equality of access to classes which continue to need the designation "Protected Classes" if we are to meet these goals set by President Lyndon Johnson some 21 years ago.

Mr. HAYES. Thank you, Reverend Riddick.

Miss Daylie, I would like, for my own information, to have any figures from you that substantiate the percentage of women members that your union has. Since your union, as I understand it, represents essentially people who are employed in the public sector, on a city, county and State level, you make quite an extensive statement in terms of discrimination against women. I gather that a good percentage of your membership is women.

Could you give me any figures that——

Ms. **Daylie**. I don't know, off hand, the percentage.

Mr. **Hayes**. I know it's a high percentage of women, right?

Ms. **Daylie**. Yes, in city and State government.

Mr. **Hayes**. And the same thing is true of handicapped, you have a high percentage there?

Ms. **Daylie**. Yes.

Mr. **Hayes**. If you could furnish this committee with some figures, I think it might be helpful in our deliberations.

Now, Miss Blackshere, you expressed to me what seemed to be a rather optimistic note when you say, in effect, that we aren't going to have discrimination and will have Federal funds to pay for it. Do you have any reason to——

Ms. **Blackshere**. I have confidence that Congress will pass this legislation, first of all, to restore the road we were making toward eliminating discrimination. In regard to funds, I may have misled you. I am very concerned about the adequate funds and the dramatic cuts that have been made certainly that affect my members in regard to education.

Mr. **Hayes**. I don't quite share your confidence and optimism based on what was the experience last year. We passed the bill in the House, and maybe there's been a change of position in the Senate, but I don't want you to be too optimistic to the point where you don't lobby and put the pressure in the direction it's supposed to be.

Ms. **Blackshere**. Oh, we will.

Mr. **Hayes**. Just make sure your optimism is not grounded by both Houses of the Congress. That's my reason for raising the issue.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Thank you very much, Mr. Chairman.

I have three questions that I would like to ask each of the panelists, if they could answer with a simple yes or no.

First of all, I agree with the interpretation that Miss Blackshere made of Congress' original intent relative to title IX. It was intended to be institution-wide coverage, so that an entire institution of higher education would be brought in under title IX if any of its departments or agencies or subunits accepted Federal funds, directly or indirectly, and that the Supreme Court misinterpreted Congress' intent when it rendered the *Grove City* decision.

The three questions that I have, however, I would like to ask each of the panelists if they support the substantially restricted scope of coverage in the public sector as against the expansive scope of coverage in the private sector contained in H.R. 700.

Ms. **Daylie**. I guess because of the structure in the public sector, in order to cover—in the private sector, when you cover it, you're just covering like corporations, the whole corporation. We have a problem—I guess you're talking about breaking structures up into different departments in the public sector?

Mr. **Sensenbrenner**. Yes.

Ms. **Daylie**. Yes, that's my understanding of it.

Mr. **Sensenbrenner**. Miss Blackshere.

Ms. **Blackshere**. I have a concern about that. I want to see discrimination eliminated totally. If broadening it to the public sector needs to be done, then our organization is favorable to that. I don't want to see one not get what the other does.

Mr. SENSENBRENNER. Mr. Bolden.

Mr. BOLDEN. The NAACP has taken a position in support of H.R. 700 and I can only speak for their national policy. That particular question has not been addressed. We were just in Washington and were discussing it. But if you ask me personally, my answer is no, I don't support that limited scope. Quite frankly, my experience in the public sector has been one of the areas where we have found in the smaller communities are the toughest nuts to crack. So if anybody asked me, if it ever got to a question of policy for the NAACP, I want the coverage to be as broad as I could make it.

Mr. SENSENBRENNER. Reverend Riddick.

Reverend RIDDICK. I would want the broader coverage. I think any observation of grades beyond grade 6 in the Federal Government indicates that you need to do that, and on similar scales within the State government, that you would need broader coverage.

Mr. SENSENBRENNER. Let me observe that the opinion of the panel was not unanimous. Also, the opinion of Mayor Washington supporting the more restrictive coverage today was different than the opinion of Mayor Young in Atlanta, who did not support it when we heard his testimony on Monday.

The second question I would like to ask is, if it can be shown that certain private institutions would not accept guaranteed student loan, Pell grant and GI bill students because they would be brought under the coverage of this law as a result of H.R. 700, and if it can be shown that more minorities require Federal student financial aid to go to college, particularly private colleges where the tuitions are higher than public colleges, would you support some kind of exemption in this bill simply to open the doors to some of these students so that they would have the opportunity to go to private colleges and would not be restricted just to publicly-supported colleges?

Ms. DAYLIE. Are you saying that—I'm trying to understand your question.

Mr. SENSENBRENNER. Let me put it another way. We have had testimony that said there are a lot of private colleges and universities, most of them church related, who as a matter of principle don't accept Federal aid. They say that if this bill is passed, and the admission of the student on a guaranteed student loan, a Pell grant, or GI bill funds, would bring them under the coverage of the Civil Rights Act, they will simply have a blanket policy of not accepting any guaranteed student loan, Pell grant, or GI bill students.

Now, if——

Ms. DAYLIE. So they want the right to discriminate?

Mr. SENSENBRENNER. Yes—well, they don't call it discrimination. They just say they don't want to have to crawl under all of the regulations that they would. And they don't take Federal aid of any other kind whatsoever.

Now, there have been some groups that represent minority students that have come to me and expressed the concern that the choice that these students would have on where they could go to college or universities would be significantly restricted if this is what the result was. In other words, these schools are saying; "We don't want any part of your civil rights laws, and we will even refuse admission to students, white, black, Hispanic or whatever, that come here on Federal funds, simply because we don't want to have any part of these laws."

Now, if that was the result of this law, what would your position be?

Ms. DAYLIE. I wouldn't support anything that gave anybody the right to discriminate.

Mr. BOLDEN. I would have to say a resounding no, Congressman, because these church-related schools that you're talking about immediately brings to mind *Bob Jones University* and that ilk. I can only suggest to you that there will not be any substantial loss to minority students, in my judgment. I really, quite frankly, think your scenario will never work. I can't imagine any college or university today, with the problems they have financially, turning down a Federal buck. I just can't believe it.

So the answer is No.

Mr. SENSENBRENNER. Just for the record, *Grove City College* already did. They are sending out letters to their alumni asking for donations to the scholarship fund because they aren't able to take guaranteed student loan kids any more. There was never any allegation of discrimination that was made during the entire *Grove City College* litigation against the college or university. Nobody accused them of discriminating on the basis of any factor in their admissions policy, in their faculty hiring policies, or whatever.

Mr. BOLDEN. I agree with your statement of facts about *Grove City College,* but I suggest, Congressman, that I can't imagine there would be a significant number of higher education institutions that would opt out on that basis. I can't believe there would be a significant number.

Mr. SENSENBRENNER. That is not what I have heard, and that is a concern. In effect, the higher institutions opting out would end up penalizing the students who receive various forms of Government financial assistance and restricting what choice of college or university they would be able to go to.

Reverend Riddick.

Reverend RIDDICK. I would say no.

Mr. SENSENBRENNER. The final question that I have, two months ago the two Democratic appointees to the United States Civil Rights Commission—Mary Frances Berry and Blandina Cardenas Ramirez—filed a supplemental statement to a report that the Commission issued on the *Stotts* case. Commissioners Berry and Ramirez made the statement that the civil rights laws are not designed to protect all Americans.

Do you agree with that statement or not?

Reverend RIDDICK. Again, in what context? Are you saying that they're saying as presently set they are not? What are you saying, Congressman?

Mr. SENSENBRENNER. The statements that the two Commissioners made indicated that they were not passed in the first place to protect all Americans.

Reverend **Riddick**. If by that you mean specifically related to *Stotts* v. *The Firefighters* case, that those laws were designed to protect protected classes, they're right. They're right. It protects America because it extends the guarantees of equal access to all Americans. But in the strictest sense of the word, is it supposed to protect white males? No. It was not designed to make them a protected class.

Mr. **Sensenbrenner**. Whose next?

Mr. **Bolden**. Well, I would like to have the context as well, Congressman. But, simply stated, the civil rights laws wouldn't have been passed if there hadn't been rampant racial discrimination and segregation against blacks in America. Now, if the blacks weren't here, would they have been passed? I think the answer is no. So I really don't think those two ladies are out of line by suggesting that the civil rights laws weren't designed to protect everybody, not in the strictest sense.

However, that kind of a sentence can be used and abused by others who want to suggest there is this special legislation for this special set of Americans. I would just like to suggest we would like very much to stop being special, any time you all will let us.

Mr. **Sensenbrenner**. I feel that way, too.

Miss Black here.

Ms. **Blackshere**. I think the easiest way to answer that is, as a white female, not all of the civil rights laws personally affect me. However, with the institution and the passage of them, and hopefully their restoration, all of me will be restored and be civilly right. I think that's the easiest way.

Mr. **Sensenbrenner**. Miss Daylie.

Ms. **Daylie**. The way for me to answer that is that the civil rights laws were passed to protect a certain group of people, so that what they were for. They were for a special class of people that were wronged and needed to be right.

Mr. **Sensenbrenner**. I would just point out that I asked the same question on Monday of Mayor Young, who has been in the forefront of the civil rights movement for at least 25 years, and he did indicate that he felt Commissioners Berry and Ramirez were out of line in making that statement, because the moral strength of the civil rights movement has been to protect the civil rights of all Americans. Prior to the passage of the civil rights laws, of course, some Americans' civil rights were not being protected. But the reason that thinking people, who were in the majority, strongly supported the civil rights laws was because they recognized that there was an unequal application in practice and that we needed some additional protections.

The Washington Post, which has consistently supported the civil rights movement, did editorialize against Commissioners Berry and Ramirez.

I would be hopeful, when we're talking about civil rights legislation, as we are doing today, that we keep in mind that every American should be equal under the law and that these laws are not aimed at protecting a specific group or targeted at a specific group, but again making the law color blind and sex blind and handicapped blind and age blind as we talk about discrimination and how to get rid of it.

Reverend RIDDICK. Mr. Congressman, if I may, respectfully so, first of all, I think what my colleague, Attorney Bolden, has said with reference to the context of that, just in some sense reiterating what we have said, is important to understand. I think anyone understanding the experiences of Commissioner Berry and Ramirez, vis-a-vis other commissioners—and I might say they're not the only Democratic commissioners—they have disagreed with other commissioners who are Democratic commissioners on the board. But I think an appreciation——

Mr. SENSENBRENNER. I said Democratic appointees. The other ones are not.

Reverend RIDDICK. Let me simply say this, Mr. Congressman. I think a reading of Mr. Blackmun's dissent in the *Bakke* case, *Bakke* v. *The Board of Regents,* and also the statement or opinion of Justice Marshall, indicates very clearly what we are saying, and Justice Marshall specifically addressed himself to the question of whether anything could be color blind within the context of the current problems of race in our country. We certainly hope to move toward a day when all of the laws can be applied in a way that is racially color blind. But I think at this point we would have to at least understand that and qualify it within a certain direction, because we are dealing with problems that need compensatory remedies. We are dealing with problems that are of centuries length in terms of their effects. I think they were addressing themselves to the question of the effects of past practices as well as anything else.

Mr. SENSENBRENNER. Thank you.

Mr. HAYES. Mr. Hawkins.

The CHAIRMAN. At this point, I think we're getting to a rather philosophical question. I think Reverend Riddick put his fingers on it when he referred to the question of color blindness. We are not living in a society that is color blind. I think you cited Mr. Blackmun's opinion but you didn't specify altogether what he said. He said that to treat people equally you sometimes have to treat them differently. I think that is the context in which this statement emanating from the Civil Rights Commission was made, that it tended to refute the position of Mr. Reynolds of the Justice Department, and some of the members of the Civil Rights Commission, that we should be color blind and, therefore, we should be out to protect groups that really are not seeking protection—white males, for example—at the expense of those who are actually being discriminated against.

So the question arose, do you have to be specific in terms of discrimination, which is discrimination based on group identity. So it is, by definition, one which is against a group, and to remove it you have got to recognize the group and recognize color.

I think that argument takes us away from H.R. 700, since in H.R. 700, all we are trying to do is to restore the law as it prevailed prior to *Grove City*. To be specific, it seems to me that we are trying to seek institution and corporate wide coverage. I would assume that all of the witnesses, while they answered the question of whether they wanted a wider or more limited coverage, all answered that you wanted the widest possible coverage in every instance. If any of you disagree, you may say so. But that is what I assumed you did say, that you wanted the widest possible coverage.

It is obvious that in treating a corporation or a State or individual or an educational institution that has perhaps branches, that you're going to have to make some distinctions as to these entities. They are not all alike. I would assume that most of the witnesses agree that your coverage is going to have to be tailored to the specific case. If you disagree with that, I wish you would so state. Do you or don't you feel that the coverage has to be tailored to each specific case? I assume no one disagrees with that. So that we do get down to some variations. But in the final analysis, what we are seeking in H.R. 700, and what I assume the witnesses would agree to, is the widest possible coverage.

But let me ask more specifically—and I think Miss Daylie and Miss Blackshere both dealt with it—about voluntary compliance which we're concerned about. Do you believe that if this decision is not reversed that it will dampen the efforts in extracurricular activities, let's say, of girls in athletics?

Ms. **Daylie**. I agree with that. I think it would.

Ms. **Blackshere**. Just to underline how dramatically the reversal would occur, we finally have this weekend in Illinois high school basketball going on. For years it was boys high school basketball. We now have boys and girls high school basketball tournaments going on in Illinois. That only happened because of these laws. We have to return them to where they were.

The **Chairman**. Let me ask any one of the witnesses who would care to answer. If we do not pass legislation similar to H.R. 700, or H.R. 700 itself, do you feel that the result will be that discrimination will become widespread; that as a result of the failure to take some action, individuals, corporations, educational institutions, employers and others, will feel that they have been, in effect, encouraged to discriminate?

Ms. **Blackshere**. Not only with that decision do we have an adverse effect, but the way the Department of Education has responded to that by putting so many on hold that were moving forward, that there is no question we will be reversing the progress that we made over the past years.

Reverend **Riddick**. Congressman Hawkins, it would be my view that this is extremely critical to preventing future acts of discrimination. I note that there are at least 65 other cases that are being reviewed now along this line. One of the things we fear is that when the Justice Department talks about review, at it did in the *Dade County* case and in the case of *Stoots* v. *The Firefighters*, they really mean they will erase what protective measures exist in one way or another, either by going to court or by taking administrative action to erase the effects of those particular orders.

I think it is awfully important that we have this legislation to, as you have said, call a flag, really halt discriminatory actions taken by colleges and universities. I just see the educational arena as being so strategic with reference to this question of equal access, especially in the wake of the kind of experiences we have had in the past.

Mr. **Bolden**. Congressman, I would like to respond thusly. The NAACP views this legislation as being absolutely vital. The reason is, while we have watched this administration, through its Justice Department and its Civil Rights Commission, go through a number of activities which have been contrary to the things we thought they ought to do in the field of civil rights. If they have a different philosophical approach to civil rights, I guess they're entitled to that. But we're talking about the Supreme Court of the United States, which pronouces the supreme law of the land, and one of the coequal partners in setting forth the policy of these United States. It has been the Supreme Court who over the years has been the protector of the individual rights of individuals, at least in the recent last 20 or 30 years to which we have looked.

When we see the Supreme Court of the United States begin to take from a civil rights act or civil rights provision and interpret it narrowly, so that it becomes a sliver of what it was, then it is a real signal to us that the danger is very great to the idea of equality in this country, for everybody concerned; where the Supreme Court, if you read the opinion, can come to the conclusion that it did, even though common sense would sort of tell you that it makes no sense to say that; nevertheless, they did. That's the law of the land now and we're bound by it now.

Only Congress can correct it. As I put in my statement, it falls on the shoulders of Congress now, the third coequal partner in government, because the executive branch has gone in one direction and we see the Supreme Court now receding on civil rights legislation. Congress must restore it and make it very clear to all of the courts, in interpreting Congress' pronouncements, that it means what it says when it says what it means. So it's vital, absolutely vital.

The CHAIRMAN. Thank you, Mr. Chairman.

Mr. HAYES. Miss Blackshere, your statement refers to your advocacy on behalf of our Nation's school children. Please explain how the *Grove City* decision has hurt children's opportunities in education.

Ms. BLACKSHERE. It is so multiple, from young women to minorities, to the handicapped, that what we will see—Let me just to give an example for the handicapped. Many school districts were forced by law to offer physical facilities for the handicapped youngster. They are now talking about they are going to be able to, in new buildings, not have elevators, not have ramps, not have the facilities or the programs for that youngster.

We have come a long way in educating and offering opportunity for the disabled and handicapped. That will all go backwards. School boards are already talking about it.

In the opportunity at the university level, where we represent faculty and the students who have opportunity there, it is being diminished dramatically. As one of the witnesses pointed out, there is a dramatic cut in the number of students who are entering community colleges and universities nationwide and in this State. We have women who had opportunity opened to them in schools of engineering, medicine and law, whose doors will be closing if we don't offer this proposal and pass this proposal.

Mr. HAYES. Thank you.

Reverend Riddick, this committee has heard witnesses in other areas in which we have been say that H.R. 700 is so broad that it would dictate what churches can teach in the way of religious beliefs or doctrines.

Do you see any chance of this ever happening, or do churches have anything to fear?

Reverend RIDDICK. No, I don't see any chance of that taking place. I think that where this opinion possibly arises is out of the experience of the *Bob Jones* situation and the *Goldsboro Christian Schools*, on the issue of tax exemption in that case. But the principle that, of course, the Federal Government is attempting to dicate a viewpoint with reference to the churches' doctrine, I don't see this as the case at all.

The Federal Government, just as it provides other laws that protect the total scope of the population, is simply seeking to assure that these groups that would normally not have the protections, these protected classes, will be granted those in each instance where the institution opts to accept Federal funds. I think if an institution says it won't accept Federal funds, then that is another case. But certainly we should not be subsidizing through Federal funds an institution's right to discriminate.

Mr. HAYES. I just want to say to each of the panelists you have presented us with excellent testimony, supplemented by responses to questions which point clearly to your positions in support of H.R. 700. We shall use it to whatever benefit, will be helpful in trying to convince other members of the legislative body of this Nation to support the positions which you have indicated.

I must say, as I have said to others, you should not relent in your lobbying efforts, to make sure we do pass legislation that restores the civil rights status to what it was before *Grove City* v. *Bell*. Thank you very much.

Reverend RIDDICK. Thank you.

Ms. BLACKSHERE. Thank you, Mr. Chairman.

Mr. HAYES. The next panel is David Johnston, senior vice president of Wheaton College; Prof. Gary Orfield, University of Chicago; Josephine Holzer, executive director, Council for Disability Rights; Cris Matthews, disability rights coordinator, Access Living; Ralph Keen, Illinois Association of Christian Schools from Normal, IL; Susannah Smith, an attorney from the Office of the Illinois Attorney General, Disabled Persons Advocacy Division; and James Roberts, assistant dean, College of Dentistry, University of Illinois.

I might add that, as I suggested to the other panelists, your statements that you have presented to us in writing will be entered into the record in their entirety. You have the choice of reading your entire statement or you can highlight the statement. We will complete the statements from the total panel, and once that is done, we may have some questions of each of you that we want clarity on.

We will start with Mr. Johnston.

STATEMENT OF DAVID JOHNSTON, SENIOR VICE PRESIDENT, WHEATON COLLEGE; GARY ORFIELD, PROFESSOR OF POLITICAL SCIENCE, PUBLIC POLICY AND EDUCATION, UNIVERSITY OF CHICAGO; JOSEPHINE E. HOLZER, EXECUTIVE DIRECTOR, COUNCIL FOR DISABILITY RIGHTS; CRIS MATTHEWS, DISABILITY RIGHTS COORDINATOR, ACCESS LIVING; RALPH KEEN III, ESQ., THE ILLINOIS ASSOCIATION OF CHRISTIAN SCHOOLS AND THE ILLINOIS CHRISTIAN ACTION NETWORK; SUSANNAH SMITH, ESQ., ASSISTANT ILLINOIS ATTORNEY GENERAL, DISABLED PERSONS ADVOCACY DIVISION; AND JAMES P. ROBERTS, ASSISTANT DEAN, COLLEGE OF DENTISTRY, UNIVERSITY OF ILLINOIS, A PANEL

Mr. JOHNSTON. Mr. Chairman and members of the committee, I am speaking in behalf of the president of Wheaton College, Dr. Richard Chase, who is unable to be here this morning. He is also the first vice president of the American Association of Presidents of Independent Colleges and Universities.

I will choose not to present the entire statement, but rather to highlight it, in the interest of time.

Mr. Chairman, I would like to speak about a couple of concerns that we have with respect to H.R. 700, but I would like to mention first that these concerns do not relate to some of the concerns that have been described earlier in the comments this morning or other forums. Wheaton College has had a principle of nondiscrimination which has existed since its founding in 1860. Our college was one of the early co-educational institutions in this country, and our founder was very much involved in the antislavery movement at that time. We have carried on that tradition until today.

We have signed the compliance forms for title IX when they were sent to our institution. We participated in those student aid programs and we have not had any problems with agreeing, as participants in the student aid programs, to abide by the title IX requirements, section 504 requirements, and so forth.

Mr. Chairman, we also are not concerned about the intent of this legislation to expand the definition of program or entity beyond what was concluded in the *Grove City* case. We feel that that is also appropriate.

We have two specific concerns about this legislation, and I would like to describe them briefly for you.

The first has to do with the definition of a recipient of Federal financial assistance. The second has to do with the applicability of religious exemption which applies in the nondiscrimination statutes to some institutions for which there is a question right now as to how that exemption applies.

In the first case, the definition of a recipient, there has been much discussion about who is a recipient. In the earlier conversation this morning, the discussion about problems for governmental agencies and the definition of who is a recipient. The particular concern that we have is for those few institutions who would feel as a matter of principle that they do not wish to be a recipient of any Federal financial assistance. That they should have to come under the regulatory authority of a Federal agency we feel is inappropriate. If an exemption could be made for those few institutions, we think that would be helpful. It would not apply in particular to Wheaton College, but we are speaking on behalf of other schools where if they only accept students who receive aid we feel they should not come under the scope of that regulatory authority.

I am more concerned about the particular issue of religious exemption for an institution such as Wheaton College. Under title IX and some of the other nondiscrimination legislation there is an exemption for those situations where regulations or provisions of regulations conflict with deeplyheld religious views of organizations, colleges, schools, and churches.

In the case of that legislation, there have been different ways of stating that religious exemption. We are not asking that the exemption itself be broadened, or be applied in a different way, than it has in past legislation. Instead, we are asking that there be a clarification of the organizational structure or definition of who qualifies for such an exemption.

In title VII of the Civil Rights Act of 1964 there is a provision of religious exemption which has been useful to schools such as Wheaton College, where we have had difficulties with specific provisions. We would ask that the legislation as it is passed including wording such as is included in title VII of the Civil Rights Act of 1964.

Mr. Chairman, the issue on religious discrimination has to do with the particular wording. In title IX it says that a school or college can have a religious exemption if it is controlled by a religious organization. The problem with that wording is that there are a number of schools which, while deeply religious, having deeply religious convictions, are not under the authority of any particular church or any particular church denomination. We would ask that in the consideration of this legislation there be made provisions such as in other civil rights legislation, so that a school like Wheaton College, which while having deeply religious convictions is not under the authority of a particular church, could qualify.

It is not a hypothetical case. When we applied for our religious exemption under title IX with the Department of Education, we were asked to substantiate that we were controlled by a church or religious organization. So we would ask that that be clarified.

Mr. Chairman, I conclude by saying that in the Senate there have been amendments offered to similar legislation being presented in the House by Senator Hatch which would deal with both of these issues, and we would urge that the House of Representatives consider that type of language to deal with these issues in considering H.R. 700.

Thank you.

[The prepared statement of J. Richard Chase follows:]

PREPARED STATEMENT OF J. RICHARD CHASE, PRESIDENT, WHEATON COLLEGE

Mr. Chairman and Members of this Joint Committee, I appreciate the invitation to appear before this Committee and to share with you my views concerning H.R. 700, "The Civil Rights Restoration Act of 1985," and its implications for private education.

I am here in two capacities. I am First Vice President of the American Association of Presidents of Independent Colleges and Universities ("AAPICU"), and I am President of Wheaton College, an independent college of 2,500 men and women located in Wheaton, Illinois.

AAPICU was organized in 1968 and it includes presidents from approximately 165 independent colleges and universities representing 40 different states. Attached to my written testimony is a recent membership list for this group. The AAPICU schools have a total enrollment of about 330,000 students. Some of the member schools are large universities such as Baylor, Villanova, and Brigham Young. The majority of schools, however, are small colleges with enrollments under 2,500. AAPICU is committed to promoting the highest standards of academic excellence, and many of its schools have exemplary academic reputations. Many AAPICU schools are church-related and represent numerous denominations. All of the member schools are deeply committed as a matter of conscience to the goals of non-discrimination and equal opportunity in higher education, and they govern their affairs in accordance with nondiscriminatory principles.

As a general proposition, AAPICU member institutions have been determined and principled in their efforts over many years to remain truly private and independent in their operations. This conscious self-reliance results from an intense desire to remain free of outside control and intervention--so as to allow the pursuit of distinctive educational missions. Historically, independent schools in this country have provided myriad options to the nation's students--allowing them to choose from diverse educational opportunities. The existence of strong independent colleges and universities has allowed students to choose between religious and secular educations, between liberal arts and technical training, between large and small, urban and rural, and public and private instruction. This tradition of diversity is one of the most appealing and significant features of higher education in America.

The college which I represent, Wheaton College, exemplifies this intense desire to maintain its independence and to provide a distinctive educational alternative. Wheaton College is distinctively Christian and academically rigorous. We unabashedly espouse an educational philosophy which relates the Christian faith and liberal learning in order to produce a Christian perspective on the needs of contemporary society; and, we do this without sacrificing academic rigor or narrowly constraining the academic disciplines. More than 75% of Wheaton's entering freshmen have graduated in the top 20% of their high school classes and their average SAT scores are more than 200 points (22%) above the national average. Our graduates go on to distinguished careers in education, the professions, and human services. Among our 34,000 alumni are two dozen college presidents, more than 2,500 teachers and college professors, 1,000 physicians, and 500 attorneys. In fact, in the Franklin and Marshall study of 867 private undergraduate institutions whose graduates pursue doctoral degrees, Wheaton College ranks 12th as the undergraduate origin of graduates who had completed doctoral degrees.

It is important to emphasize that Wheaton College, and all other AAPICU institutions, are deeply committed to principles of nondiscrimination and equality. During its entire one hundred and twenty-five year existence, Wheaton College has stood for educational opportunity for students. The College's founder, Jonathan Blanchard, was active in the anti-slavery movement and he was a proponent of equal educational opportunities for women at a time, 1860, when educational opportunities for racial minorities and for women were severely limited.

Today, Wheaton College stands firmly in support of the ideals encompassed in the legislation which would be amended by H.R. 700. Wheaton College has willingly certified to appropriate federal agencies its compliance with the legislated nondiscrimination requirements with respect to race, handicap, age, and sex. Nevertheless, I come to speak to you today out of a deep concern that unless it is carefully crafted, legislation to protect some civil rights can in fact trample on other equally important and constitutionally guaranteed rights.

It is my hope that the Congress will find a way to accommodate the many important interests involved, and that it will enact civil rights legislation which balances the interests of independent educational autonomy and freedom of religious expression with protections against discrimination. Unfortunately, the legislative proposals offered in response to the Grove City College v. Bell decision do not accomplish this important objective. The spectre of vesting authority in federal agencies to regulate the academic programs of institutions such as Grove City which benefit only indirectly from federal financial assistance and to evaluate the appropriateness of deeply held religious convictions of colleges such as Wheaton College is at the heart of my concerns about H.R. 700.

To put this into context, it is important to realize that these two problems have relevance for a very small group of private colleges and universities. Most schools have extensive federal involvement in their affairs, and rightly so, due to the enormous amount of federal aid which goes into the coffers of most of the nation's colleges and universities--both private and public. Because of this fact, institution-wide federal regulation of such educational institutions may be warranted; nevertheless, in its present form, the proposed legislation to enforce justifiable federal interests in nondiscrimination by such schools not only encompasses those few schools which do not receive any direct financial assistance, but also fails to protect the legitimate civil rights to the free exercise of religion of others such as Wheaton College.

Congress can outlaw discrimination and enforce the antidiscrimination laws in the educational context without interfering with the academic independence of the few private educational institutions which seek to remain free from federal entanglements for reasons of principle alone. In this regard, I ask that you support amendments to H.R. 700 which would protect the interests of independent schools. Attached to my written testimony are copies of two proposed amendments to S.272 offered by Senator Hatch which would help to promote the objective of preserving academic freedom and independence in higher education, and are deserving of your support.

The first of these two amendments would exempt from Title IX coverage those very few private educational institutions which do not receive direct federal financial assistance and which have sought to avoid federal intervention into their affairs. These schools have been denominated "recipients" because of the "indirect benefit" they supposedly receive by virtue of their enrolling students receiving "non-campus-based" student aid in the form of ADS-Pell Grants or Veterans' Benefits monies. We submit that students eligible for such benefits should be able to enroll in the schools of their choice without subjecting those schools to federal intervention. Under the student aid programs at issue, the grants are sent directly by the federal agencies to the eligible students, and the colleges have no role in the calculation or distribution of grant monies. Since monies received by students under these programs are for "educational" purposes, they are used in a variety of contexts. Under the strict reasoning of the Grove City decision and the House bill, any recipient of this federal aid--such as the school, the corner grocery store, or the private landlord--would be covered under the major civil rights statutes. There is simply no principled reason to distinguish between the various recipients of educational monies--a circumstance which points out the awkwardness and unworkability of the "indirect" benefits approach.

Of legitimate concern is the makeup of the schools which would be protected by the exclusion from nondiscrimination law coverage. The Hatch amendment contains restrictions which assure that the few independent schools involved are deserving of this protected status. First, the schools must be non-vocational (and thus the schools must be involved in the transmission of academic principles and ideas, rather than in providing vocational and employment training); second, the schools must be eligible for tax-exempt status under Section 501(c)(3) (status which schools with racially discriminatory policies cannot retain); and, third, the schools must have exemplary civil rights records, and must not have discriminated in violation of federal or constitutional laws concerning civil rights. If an institution did discriminate, it would be subject to civil rights jurisdiction under the relevant nondiscrimination statistics and would face the termination of student financial assistance, as well as other statutory sanctions.

The second amendment addresses the need to establish a more effective religious exemption. This is an area of concern to Wheaton College in particular. Title IX currently contains a religious exemption which is limited in institutions "controlled" by religious organizations. Such entities are entitled to seek an exemption through the Department of Education if a Title IX regulation conflicts with a particular "religious tenet." A number of schools such as Wheaton College are not formally "controlled" by religious organizations, but are clearly religious in character and nature. The current statutory language is too limited and therefore infringes on the free exercise of religion by some religious schools.

Schools which incorporate into their educational philosophy the religious tenets of a church, but which are not "controlled" by a church or "religious organization," ought to be entitled to the same exemption as schools which are "controlled" by a church.

This is not a hypothetical concern. When Wheaton College submitted to the Department of Education the assurance of compliance with the implementing regulations issued under Title IX, the College requested a religious exemption from certain provisions of the regulations which were in conflict with specific religious tenets of the College. (For example, in the absence of a religious exemption, the regulations issued under Title IX would appear to require the College to condone abortions without regard to individual circumstances and, in fact, to make provision to fund them for participants in the College's health insurance program.) In response to the College's request for religious exemption from specific provisions, the Office of Compliance and Enforcement of the Office for Civil Rights requested "supportive information which demonstrates Wheaton College falls within the definition of a religiously controlled institution."

The College provided the "supportive information," asserting that a religiously oriented college is in fact religiously controlled; however, it has had no response from the Department regarding the acceptability of its request for religious exemption. Currently, in excess of 200 religious exemption requests have been filed with the Department of Education without being processed. These requests span a number of years and present, in my opinion, an unconscionable situation. The status of a number of schools deserving of protection is not clear. Moreover, this situation clearly points to another problem. The Department is currently in a position to make decisions concerning the "legitimacy" of religious doctrines and tenets. Agency determinations on such matters would appear to require an unwarranted entanglement of church and State.

The Hatch Amendment, number 9 to S272, gives to all educational institutions which espouse specific religious tenets the same religious exemption currently provided in Title IX only to those institutions which are "controlled" by a religious organization. To do so, the Amendment draws on language previously incorporated in Title VII of the Civil Rights Act of 1964 as Section 703(e)(2) where the language provides an exemption to provisions for nondiscrimination in employment which might conflict with an employer's religious tenets. The Hatch Amendment does not expand the number of situations to which colleges could apply the current religious exemption; rather, it allows a number of schools for which the existing exemption ought to apply to be assured of its availability.

The issues presented by the current legislative debate are difficult ones, and clearly they impact upon certain fundamental principles underlying the history of this nation. However, the debate thus far has imperfectly focused on the nature of the perceived problem. We don't believe that discrimination should be allowed. Thus, in registering our objections to H.R. 700--because of its deleterious impact on private education--we are not also registering a desire to discriminate with impunity. Instead, the opposite is true, and any thoughts to the contrary should be quickly dispelled.

We respect and uphold the antidiscrimination laws of this country, but also believe that consideration must be given to the many other civil rights which are at stake. Free academic expression, and the exercise of religious liberty are matters equally deserving of Congressional concern. It is my belief that Congress does not intend the result that H.R. 700 as presently stated would bring in the educational context. There is a strong consensus in this country that private colleges and universities have provided educational excellence and training to many individuals, and have positively contributed to society throughout this nation's history. In light of this recognition, it is difficult to imagine that Congress would intentionally act in a manner which would threaten the continued existence of the private educational alternative.

In behalf of Wheaton College and AAPICU , I applaud the desire of the sponsors of H.R. 700 to restore to appropriate federal agencies the authority to enforce compliance with federal nondiscrimination statutes. For the large majority of educational institutions which are recipients of direct federal financial assistance and which do not have legitimate religious convictions which might be abrogated by specific provisions of the regulations, H.R. 700 appears to be an appropriate remedy. Nevertheless, I urge you to ensure independence from federal regulation for those institutions which as a matter of principle forego direct federal financial assistance, and I urge you to protect the free exercise of religion in religiously affiliated educational institutions, regardless of the specific nature of the formal affiliation with a "religious organization."

Thank you.

HATCH AMENDMENT NO. 8 TO S.272

At the appropriate place, add the following new provision:

"Provided, however, That no institution of higher education shall be deemed a 'recipient' where the only Federal financial assistance extended consists of grants received directly by students in attendance at such institutions under 20 U.S.C. 1070a (Basic Educational Opportunity Grant Program, ADS); or 38 U.S.C. 1681 (Veteran's Educational Assistance Program). This exclusion shall not apply to proprietary institutions of higher education; vocational schools; any school not entitled to tax-exempt status under 26 U.S.C. 501(c)(3); or to any school which, during the five years preceding has been finally adjudged by any court of the United States to have discriminated in violation of any provision of the Constitution or law of the United States relating to civil rights."

HATCH AMENDMENT NO. 9 TO S.272:

At the appropriate place, add the following new provision:

"Subsection 901(a)(3) is amended by striking everything following 'educational institution which is' and inserting in lieu thereof the following: ', in whole or substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, or society, or in which the curriculum is directed toward the propagation of a particular religion if the application of this subsection would not be consistent with the tenets of such.'"

AMERICAN ASSOCIATION OF PRESIDENTS OF
INDEPENDENT COLLEGES AND UNIVERSITIES

Membership - November 21, 1984

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Columbia Bible College	Columbia, South Carolina	Dr. J. Robertson McQuilkin

Membership - November 21, 1984

Concordia Teachers College	Steward, Nebraska	Dr. Michael Stelmachowicz
Cumberland College	Williamsburg, Kentucky	Dr. James H. Taylor
Dallas Baptist College	Dallas, Texas	Dr. W. Marvin Watson
Divine Word College	Epworth, Iowa	Rev. John J. Donaghey, SVD
Dordt College	Sioux Center, Iowa	Dr. John B. Hulst
Dr. Martin Luther College	New Ulm, Minnesota	Dr. Lloyd O. Huebner
Dropsie College	Philadelphia, Pennsylvania	Dr. David M. Goldenberg
Eastern Nazarene College	Quincy, Massachusetts	Dr. Stephen W. Nease
Eckerd College	St. Petersburg, Florida	Dr. Peter H. Armacost
Emory and Henry College	Emory, Virginia	Dr. Charles W. Sydnor, Jr.
Eureka College	Eureka, Illinois	Dr. Daniel D. Gilbert
Flagler College	St. Augustine, Florida	Dr. William L. Proctor
Furman University	Greenville, South Carolina	Dr. John E. Johns
Geneva College	Beaver Falls, Pennsylvania	Dr. Wm. Joseph McFarland
Georgetown College	Georgetown, Kentucky	Dr. W. Morgan Patterson
Grand Canyon College	Phoenix, Arizona	Dr. Bill Williams
Greensboro College	Greensboro, North Carolina	Dr. James S. Barrett
Grove City College	Grove City, Pennsylvania	Dr. Charles S. MacKenzie
Hanover College	Hanover, Indiana	Dr. John E. Horner
Hardin-Simmons University	Abilene, Texas	Dr. Jesse C. Fletcher
Hebrew Union College	Cincinnati, Ohio	Dr. Alfred Gottschalk
Heidelberg College	Tiffin, Ohio	Dr. William C. Cassell
Hillsdale College	Hillsdale, Michigan	Dr. George C. Roche, III
Houston Baptist University	Houston, Texas	Dr. William H. Hinton
Howard Payne University	Brownwood, Texas	Dr. Ralph A. Phelps, Jr.
Illinois Benedictine College	Lisle, Illinois	Dr. Richard C. Becker
Indiana Institute of Technology	Fort Wayne, Indiana	Mr. Thomas F. Scully
International College	Los Angeles, California	Dr. Linden G. Leavitt
International Fine Arts College	Miami, Florida	Sir Edward Porter
Jamestown College	Jamestown, North Dakota	Dr. James S. Walker
Johnson and Wales College	Providence, Rhode Island	Dr. Morris J. W. Gaebe
Judson College	Elgin, Illinois	Dr. Harm A. Weber
Kansas-Newman College	Wichita, Kansas	Dr. Robert J. Giroux
King College	Bristol, Tennessee	Dr. Donald R. Mitchell
Lenoir-Rhyne College	Hickory, North Carolina	Dr. Albert M. Allran
Liberty Baptist College	Lynchburg, Virginia	Dr. A. Pierre Guillermin
Limestone College	Gaffney, South Carolina	Dr. William J. Briggs
Loma Linda University	Loma Linda, California	Dr. Norman J. Woods

Louisburg College	Louisburg, North Carolina	Dr. J. Allen Norris, Jr.
Louisiana College	Pineville, Louisiana	Dr. Robert L. Lynn
Malone College	Canton, Ohio	Dr. Gordon R. Werkema
Manhattan College	Bronx, New York	Brother J. Stephen Sullivan, FSC
Maria Regina College	Syracuse, New York	Sister Stella Maris Zuccolillo, O.S.F.
McKendree College	Lebanon, Illinois	Dr. Gerrit J. TenBrink
McPherson College	McPherson, Kansas	Dr. Paul W. Hoffman
Mercer University	Macon, Georgia	Dr. R. Kirby Godsey
Meredith College	Raleigh, North Carolina	Dr. John E. Weems
Mid-America Nazarene College	Olathe, Kansas	Dr. R. Curtis Smith
Midway College	Midway, Kentucky	Dr. Nelson M. Hoffman
Milwaukee School of Engineering	Milwaukee, Wisconsin	Dr. Robert R. Spitzer
Mississippi College	Clinton, Mississippi	Dr. Lewis Nobles
Missouri Valley College	Marshall, Missouri	Dr. Earl J. Reeves
Mount Saint Mary's College	Emmitsburg, Maryland	Dr. Robert J. Wickenheiser
Mount Vernon Nazarene College	Mount Vernon, Ohio	Dr. William J. Prince
National College	Rapid City, South Dakota	Dr. John W. Hauer
National University	San Diego, California	Dr. David Chigos
Nichols College	Dudley, Massachusetts	Dr. Lowell C. Smith
North Carolina Wesleyan College	Rocky Mount, North Carolina	Dr. S. Bruce Petteway
Northrop University	Inglewood, California	Dr. B. J. Shell
Northwest Nazarene College	Nampa, Idaho	Dr. A. Gordon Wetmore
Northwestern College	Orange City, Iowa	Dr. Friedhelm K. Radandt
Northwestern College	Watertown, Wisconsin	Rev. Carleton A. Toppe
Northwood Institute	Midland, Michigan	Dr. David E. Fry
Oakland City College	Oakland City, Indiana	Dr. James W. Murray
Oakwood College	Huntsville, Alabama	Dr. Calvin B. Rock
Ohio Northern University	Ada, Ohio	Dr. DeBow Freed
Oklahoma Baptist University	Shawnee, Oklahoma	Dr. Bob R. Agee
Oklahoma Christian College	Oklahoma City, Oklahoma	Dr. J. Terry Johnson
Oklahoma City University	Oklahoma City, Oklahoma	Dr. Jerald C. Walker
Olivet Nazarene College	Kankakee, Illinois	Dr. Leslie Parrott
Oral Roberts University	Tulsa, Oklahoma	Dr. William W. Jernigan
Our Lady of the Lake University	San Antonio, Texas	Sister Elizabeth Anne Sueltenfuss
Pacific States University	Los Angeles, California	Dr. Steven G. Kase
Pacific Union College	Angwin, California	Dr. D. Malcolm Maxwell, Jr.
Palm Beach Atlantic College	West Palm Beach, Florida	Dr. Claude H. Rhea, Jr.
Park College	Parkville, Missouri	Dr. Harold L. Condit

Membership - November 21, 1984

Parks College	Denver, Colorado	Mr. Michael A. Schledorn
Parks College of St. Louis Univ.	Cahokia, Illinois	Dr. Paul A. Whelan
Patten College	Oakland, California	Dr. Priscilla Patten
Peace College	Raleigh, North Carolina	Dr. S. David Frazier
Pepperdine University	Malibu, California	Dr. Howard A. White
Point Loma College	San Diego, California	Rev. Jim L. Bond
Principia College	Elsah, Illinois	Mr. John E. G. Boyman
Ricks College	Rexburg, Idaho	Dr. Bruce C. Hafen
Robert Morris College	Coraopolis, Pennsylvania	Dr. Charles L. Sewall
Rockford College	Rockford, Illinois	Dr. Norman L. Stewart
Roosevelt University	Chicago, Illinois	Dr. Rolf A. Weil
Rose-Hulman Institute of Tech.	Terre Haute, Indiana	Dr. Samuel F. Hulbert
Saint Augustine's College	Raleigh, North Carolina	Dr. Prezell R. Robinson
Saint Francis College	Loretto, Pennsylvania	Rev. Christian R. Oravec, T.O.R.
Saint Joseph's College	Rensselaer, Indiana	Rev. Charles Banet, C.PP.S.
Saint Mary's College	Winona, Minnesota	Brother Peter Clifford
Saint Mary's College of California	Moraga, California	Brother Mel Anderson, FSC
Saint Mary's University	San Antonio, Texas	Rev. David J. Paul
Salve Regina - The Newport College	Newport, Rhode Island	Sister Lucille McKillop
Samford University	Birmingham, Alabama	Dr. Thomas E. Corts
School of the Ozarks	Point Lookout, Missouri	Dr. Stephen G. Jennings
Sierra Nevada College	Incline Village, Nevada	Dr. Ben Solomon
Simpson College	San Francisco, California	Dr. Mark W. Lee
Southern College	Collegedale, Tennessee	Dr. John Wagner
Southern Methodist University	Dallas, Texas	Dr. L. Donald Shields
Southwestern Adventist College	Keene, Texas	Dr. Marvin E. Anderson
Southwestern College	Bethany, Oklahoma	Dr. Frank G. Tunstall
Sterling College	Sterling, Kansas	Dr. Robert A. Veitch
Taylor University	Upland, Indiana	Dr. Gregg O. Lehman
Tiffin University	Tiffin, Ohio	Dr. George Kidd, Jr.
Trevecca Nazarene College	Nashville, Tennessee	Dr. Homer J. Adams
Trinity Christian College	Palos Heights, Illinois	Dr. Kenneth B. Bootsma
Trinity College	Deerfield, Illinois	Dr. Kenneth M. Meyer
Truett-McConnell College	Cleveland, Georgia.	Dr. Ronald E. Weitman
Union College	Lincoln, Nebraska	Dr. Dean L. Hubbard
Union University	Jackson, Tennessee	Dr. Robert E. Craig
University of Dallas	Irving, Texas	Dr. Robert F. Sasseen
University of Mary Hardin-Baylor	Belton, Texas	Dr. Bobby E. Parker

Membership - November 21, 1984

University of Richmond	Univ. of Richmond, Virginia	Dr. E. Bruce Heilman
Valparaiso University	Valparaiso, Indiana	Dr. Robert V. Schnabel
Villanova University	Villanova, Pennsylvania	Rev. John M. Driscoll, O.S.A.
Warren Wilson College	Swannanoa, North Carolina	Dr. Reuben A. Holden
Wayland Baptist University	Plainview, Texas	Dr. David L. Jester
Wentworth Institute of Technology	Boston, Massachusetts	Dr. Edward T. Kirkpatrick
Westminster Theological Seminary	Philadelphia, Pennsylvania	Dr. George C. Fuller
Wheaton College	Wheaton, Illinois	Dr. J. Richard Chase
Whitworth College	Spokane, Washington	Dr. Robert H. Mounce
William Jewell College	Liberty, Missouri	Dr. J. Gordon Kingsley
Wingate College	Wingate, North Carolina	Dr. Paul R. Corts
York College of Pennsylvania	York, Pennsylvania	Dr. Robert V. Iosue

Mr. **Hayes**. Professor Orfield.

Prof. **Orfield**. Thank you very much. It is an honor to be here today for your hearings.

This is an issue that is of great interest to me. I have been studying Federal civil rights enforcement throughout the last 16 years. My initial work was on the enforcement of title VI in the South during the 1960's, the enforcement process of transferring the Southern States from the most segregated public education in the country to the most integrated in the space of just 5 years. I believe if the *Grove City* doctrine had been in place, there is a very real probability that that would not have happened.

I think what I might speak to today for just a few minutes is higher education. As a professor and as a researcher who has been looking at access of black and Hispanic students to higher education in Chicago and the suburbs, I think we have a great many very serious problems that are institutionalwide and systemwide in nature that require broad coverage of civil rights laws, and that even at its strongest, these laws had relatively little effect on the process of segregation and inequality in higher education. Certainly under the present standards they are virtually and totally unenforceable.

Last year I led a group of 16 researchers, 15 of them students at the University of Chicago, looking at minority access to higher education in 58 colleges and universities in the metropolitan Chicago area. This is a vast area of more than 7 million people with 58 colleges and universities, and we found a pattern of racial and economic stratification throughout this area, very serious, and a pattern of diminishing access to higher education by black students. So we found segregated and unequal education throughout the high schools and colleges of metropolitan Chicago. By almost every single issue we could measure, there was very serious inequality and real signs of diminishing access. Of course, many of these problems are going to be intensified by the reduction of Federal aid for low income students.

What we found was dramatically lower levels of education, college education, in all sectors of the city and the suburbs for black and Hispanic youngsters. We found that the metropolitan area was becoming increasingly minority. More than a third of the children being born here are black or Hispanic. They are being denied the opportunity they need to play an effective role in the society and economy of this metropolitan area.

Most of the black students in the Chicago area are concentrated in less than a tenth of the colleges and universities. Those colleges and universities tended to be underfunded, they tended to have unequal curriculum, they tended to have very poor records of transfer students to 4-year institutions—most of them are 2-year institutions—and we found that of those students who did transfer—and the vast bulk did not—from the community colleges, that they tended to transfer to the least selective schools and 4-year colleges, and there not having a very high level of graduation.

One of the most disturbing trends we found, and something that really called into question what kind of future we're going to have in this urban community, is that black students are getting fewer bachelors degrees, fewer masters degrees, and fewer Ph.D. degrees in 1980 than there were in 1975. Since that time we have seen data from the Illinois State Board of Higher Education to show that that trend is continuing in the 1980's. In other words, as the percent of students in the population who are from minority backgrounds rises, their access seems to be shrinking. So we have them going only into certain stratified institutions that are not as effective in training students, and we find the total number getting through the system, getting degrees that count economically, at least bachelors degrees, is declining.

During recent years, some of our most important colleges, our highest prestige colleges, and the ones that really are tied to professional education, graduate education, are showing a serious decline particularly in black enrollment. The University of Illinois' Chicago campus, which is a very, very important campus located right in the middle of all of the minority communities of the city, had a decline of 38 percent in its black enrollment between 1979 and 1983. At our own University of Chicago, we have only 3 percent black students, and that is fewer than we had in the 1970's. Some other very fine colleges—I just looked up Wheaton in our report—and in 1982 they had only six-tenths of 1 percent black students.

These major institutions and these highly selective institutions, which play an extremely important role in our society, are extremely segregated. The access to them is declining. There's an interaction force of their collapse and segregated, unequal secondary education, and inadequate scholarships and assistance to students to make that transition into very expensive higher education.

Apart from the problems of students, higher education shows many other kinds of problems that really call into question of whether we're going to build effectively integrated and accessible institutions. Faculty, for example, the number of black and Hispanic graduate students in many of the professional training programs for college teaching is declining substantially. Many of our colleges have extremely few tenured minority professors. Without minority professors, it is very hard to figure out how we will have integrated and effective institutions.

We have not had very many Federal investigations in higher education in the Chicago area, even before the *Grove City College* case. One that was done and completed recently shows that there may be very dramatic problems here. In February 1984 the Office of Civil Rights issued a letter finding against the City Colleges, which is an institution of more than 100,000 students, and the most important institution in the State of Illinois for black and Hispanic education. They found, to quote from their letter of findings, that in 1982, of the 295 black teachers in the district, 84 percent were teaching at the three predominantly black colleges, and only 11 were teaching at two predominatly white colleges in the district. Meanwhile, the administrations at the three black colleges are virtually all black. Since 1977, they said—and their complaint was filed in this case in 1978; it took OCR 7 years to come to a conclusion. Since 1977, there has been no significant change in the racial composition of either the faculty or administration at any of these five colleges.

Then they went on to speak about faculty quality. The investigation found that, regardless of a teacher's race, the full-time faculty of the three predominantly black colleages, including those most recently hired, had significantly less graduate education and fewer years of experience before being hired than their colleagues at the other colleges.

Our report showed that these very colleges that had the segregated and unequally prepared faculty were exactly the colleges that were least effective in transferring their students to 4-year, BA-granting institutions. I talk about this not as an indication that this is the only system that has problems, but as an indication that our higher education system is very far from solving the problem of discrimination, segregation, and inequality, and that we need vigorous civil rights enforcement that understands and deals with the complexity of institutionalized forces and a system that really provides access to opportunity in this society. I believe that congressional enactment of the Civil Rights Restoration Act would be a major positive step in that direction.

[The prepared statement of Prof. Gary Orfield follows:]

PREPARED STATEMENT OF GARY ORFIELD, PROFESSOR OF POLITICAL SCIENCE, PUBLIC POLICY AND EDUCATION, UNIVERSITY OF CHICAGO

It is a pleasure to appear before your committees to urge rapid congressional enactment of the Civil Rights Restoration Act of 1985. During the past sixteen years enforcement of federal civil rights laws has been a central interest of my research. My first book was on the enforcement of Title VI in the South in the sixties, a process that turned Southern education from the nation's most segregated to the most integrated in five years. I do not believe that this progress would have been possible had the Grove City College doctrine been in operation as HEW developed and enforced its school desegregation guidelines. We have never had the administrative resources or the judicial capability to enforce nondiscrimination requirements on a program-by-program basis. Unless Congress corrects the Court's reading of congressional intent it is unlikely that there will be any significant civil rights enforcement in many of our society's major institutions.

Last year I headed a team of sixteen researchers at the University of Chicago conducting a study of minority access to higher education for the Illinois Senate Committee on Higher Education. Our study found that there is an extremely sharp pattern of segregation and educational inequality for black and Hispanic students in high schools and colleges throughout the metropolitan Chicago area. In addition a study by the Education Department's regional Office for Civil Rights found the City Colleges of Chicago, the most important educational institution for minority students in Illinois, guilty of operating segregated faculties that were very unequal in terms of both educational background and teaching experience.

Equally serious problems, I believe, could be documented in other colleges and universities in our area. Our study showed a shrinking access to higher education, particularly for black students, in both Chicago and the suburbs. Certainly we have need of tools for vigorous civil rights enforcement if the dream of educational opportunity is to become a reality.

Major Findings of College Study. Our study of 58 colleges and universities in the metropolitan area of Chicago, examined an area of more than seven million people including 1.4 million blacks and 600,00 Hispanics. It found dramatically lower levels of college education for blacks and Hispanics in all parts of the metro area and extreme differences between city minority communities and suburban white areas. Most black students were concentrated in less than a tenth of the colleges. Black and Hispanic students had higher dropout rates and lower graduation levels in virtually all of the colleges. Most black students were concentrated in overwhelmingly black community colleges where only about a tenth of the students enrolling in programs supposedly leading to transfers to four-year colleges ever transferred. Those students who did transfer from these colleges were most likely to transfer to the state's only predominantly black university. That university had a high dropout rate and the lowest average admission scores in the state.

One of the most disturbing trends was the decline in black students receiving B.A., M.A., and Ph.D. degrees in both Chicago and the suburbs from 1975 to 1980. This decline took place in spite of the increasing percentage black in the metropolitan

Chicago teenage population. Data from the Illinois Board of Higher Education indicates that this trend has continued statewide in the early eighties. I am submitting the chapter "Graduation and Attrition" from the Chicago Study of Access and Choice in Higher Education for the committees' records.

During recent years some of the most important colleges and universities in the Chicago area have actually had a decline in black enrollment. The most striking change has come at the University of Illinois' Chicago campus, a fine public university located in the very heart of the city. Between 1979 and 1983 its black enrollment dropped 38%. My own university has only 3 percent black students although it is surrounded by one of the nation's largest black communities. The percent has declined since the seventies.

Aside from student populations there are clear signs of problems that will affect the possibility of achieving educational equity on the campuses for years to come. Although most campuses have very few tenured black and Hispanic faculty there is very little enforcement of affirmative action requirements. There are clear signs of a turn away from graduate school by talented minority students and similar trends in some professional schools suggest an erosion of leadership with lasting consequences.

Although there have not been many major federal investigations of colleges and universities in this area in recent years a recent analysis of the faculty and administrative hiring record of the City Colleges of Chicago by the Department of Education shows that segregation and inequality on a large scale are very much alive in the 1980s. In its February 14, 1984 letter of findings, the Education Department's Office for Civil Rights found this system serving more than 100,000 students guilty of offering the segregated student bodies segregated and unequal faculties and administrative staffs:

> The investigation found that, in 1982, of the 295 black teachers in the District 84% were teaching at the three predominantly black colleges, and only eleven black teachers were at the two predominantly white colleges in the District. Meanwhile, the administrations at the three black colleges are virtually all black. Since 1977 there has been no significant change in the racial composition of either the faculty or administration at any of these five colleges....
>
> Faculty Quality - The investigation found that, regardless of a teacher's race, the full-time faculty at the three predominantly black colleges, including those most recently hired, had significantly less graduate education and fewer years of experience before being hired than their colleagues at the other colleges. (Letter from OCR Regional Director Kenneth A. Mines to Chancellor Salvatore Rotella, February 14, 1984)

The colleges that were receiving the least trained faculty were the very colleges that our study showed were least successful in preparing their students to transfer to a college where they could earn a B.A. Unfortunately, the Reagan Administration settled with the City Colleges for a remedy that required no reallocation of faculty among these segregated and unequal colleges and failed to even set firm goals for future faculty hiring. However unsatisfactory the resolution may be, however, the evidence clearly discloses the need for continuing vigilance by federal civil rights officials over broad institution-wide patterns of discrimination. Congressional enactment of the Civil Rights Restoration Act would be a major positive step.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS—REGION V
300 SOUTH WACKER DRIVE, 8TH FLOOR
CHICAGO, ILLINOIS 60606

OFFICE OF THE
DIRECTOR

February 14, 1984

Mr. Salvatore Rotella
Chancellor
City Colleges of Chicago
Community College District #508
30 East Lake Street
Chicago, Illinois 60601

Re: 05790021

Dear Dr. Rotella:

In a letter dated May 5, 1983, the Office for Civil Rights (OCR), U.S. Department of Education, notified your predecessor, Chancellor Oscar Shabat, that we would proceed with an investigation of the above cited class complaint filed against the City Colleges of Chicago (hereinafter CCC or the District). This complaint was originally filed with our office on December 19, 1978, by a CCC faculty member (hereinafter the complainant), who made various allegations of racial segregation and class discrimination against black students and employees in the CCC system.

A partial Letter of Findings was issued on August 12, 1983, which showed the CCC in compliance in regard to the complainant's allegations of discrimination in five areas: degree programs offered, student-faculty ratios, counseling, class offerings, and classroom supplies and materials. The attached Statement of Findings contains OCR's determination on the complainant's remaining allegations regarding the selection of sites for five colleges in the District and alleged segregation and discrimination in employment. Also attached is a copy of the signed agreement between OCR and CCC concerning the employment issues contained in this report.

OCR has conducted this investigation in accordance with its responsibility for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, and its implementing regulation, 34 CFR Part 100. This regulation prohibits recipients of Federal financial assistance from discriminating on the grounds of race, color, or national origin. Since the City Colleges of Chicago collectively and individually are recipients of Federal financial assistance, they are subject to the provisions of Title VI.

The Title VI requirements applicable to site selection are contained at 34 CFR 100.3(b)(3) which specifies that:

> (3) In determining the site or location of a facilities, an applicant or recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the ground of race, color, or national origin. . .

Page 3 - Dr. Salvatore Rotella

The Title VI requirements applicable to employment are contained at 34 CFR 100.3(c)(1) and 34 CFR 100.3(c)(3) which prohibit, in limited ways, discrimination against employees.

While 34 CFR 100.3(c)(1) is concerned only with Federally supported programs whose primary purpose is to provide employment, 34 CFR 100.3(c)(3) prohibits in relevant part ". . . discrimination on the ground of race, color, or national origin in the employment practices of the recipient . . . to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries (i.e., students)." Since the complainant did not specifically allege discrimination in any Federal employment program, OCR's jurisdiction for this investigation was based on 34 CFR 100.3(c)(3) and the other various sections of 34 CFR Part 100 which prohibit discrimination against student beneficiaries on the basis of race. Thus, as previously reported to you, OCR investigated the employment issues in this complaint only after establishing that the specific allegations made could have a discriminatory impact upon students in violation of Title VI.

In making the determinations included in this report, OCR reviewed sixteen volumes of material your staff prepared and submitted concerning the issues in this complaint. Mr. Robert Sypchuyeen, legal counsel, also responded to several subsequent data requests and accompanied OCR staff on on-sites to five colleges: Kennedy-King, Wright, Olive-Harvey, Daley, and Malcolm X. On-sites were not conducted at Loop and Truman since there was insufficient evidence that they could be considered racially identifiable colleges, nor did OCR visit the District's nontraditional learning centers which were not mentioned in the complaint. The on-site visits included interviews with the College presidents and other key personnel plus the review of some additional records, mostly in the area of employment. Finally, our staff conducted interviews at the District office with the CCC's administration, including two of the Vice-Chancellors. The complainant himself was interviewed, but he did not respond to OCR's request for a list of other persons who might have knowledge about the issues raised.

In regard to the issue of site selection, OCR has determined that since its formation in 1966 the Chicago Community College District has not established any of its regular college facilities at sites with the natural and foreseeable consequence of creating racially identifiable campuses. Thus, the CCC are in compliance with 100.3(b)(3) of the Title VI regulation.

In regard to the employment issues investigated, OCR's preliminary findings were that the CCC have followed employment policies and practices which have resulted in faculty and administration that accentuated the racial identifiability of five colleges: Wright, Daley, Kennedy-King, Olive-Harvey, and Malcolm X. OCR also determined that at the District's three racially identifiable black colleges, Kennedy-King, Olive-Harvey, and Malcolm X, attended by two-thirds of the black students in the CCC, there are less qualified faculties in terms of academic credentials and experience than at the predominantly white colleges in the District.

Beginning on January 9, 1984, OCR began discussions with you and your staff regarding these findings and any steps the CCC were willing to take to correct the inequities found. We also noted that since OCR's on-site visits in 1982, CCC's central administration had taken a number of important steps to ensure uniformity in recruiting and hiring at the individual colleges. The Agreement signed between OCR and CCC on February 14, 1984 incorporates some of these changes and includes other corrective actions sufficient for OCR to conclude that the CCC are now in compliance with Title VI in regard to all of the issues investigated in this complaint.

OCR's initial findings of noncompliance were based on CCC's utilization of employment practices which failed to provide equal educational opportunity on the basis of race for all students in violation of the Title VI regulation at 34 CFR 100.3(a)(3). Specifically, equal educational opportunity is not provided when, on the basis of race, beneficiaries are provided services which are different [34 CFR 100.3(b)(1)(ii)] or have a discriminatory effect [100.3(b)(2)]. The provisions of our signed agreement, when implemented, therefore, constitute a reasonable plan to eliminate the differential treatment of students which has been the effect of certain employment policies and practices at the CCC.

Summary of Findings

Attached is a Statement of Findings which provides a detailed description of the evidence and methodology used by OCR to investigate both issues. The following is a summary of OCR's findings in regard to employment:

Assignment -The investigation found that, in 1982, of the 399 black teachers in the District 341 were teaching at the three predominantly black colleges, and only eleven black teachers were at the two predominantly white colleges in the District. Meanwhile, the administrations at the three black colleges are virtually all black. Since 1977 there has been no significant change in the racial composition of either the faculty or administration at any of these five colleges.

Hiring - The Central Administration sets the qualifications required to teach in the District, receives and circulates some applications for employment, and approves persons recommended by the individual colleges. Affirmative Action policies are also formulated by the Central Administration.

Racially Identifiable Faculty and Administration -The investigation showed that the individual colleges interpreted the District's Affirmative Action requirements differently, and most colleges retained inadequate employment records. The predominantly black colleges posted job openings but did not advertise. The two predominantly white colleges

advertised to different degrees and had hired black faculty members in the last three years but they had left within the last two years. In addition to the hiring initiated by the individual colleges, the Central Administration had reassigned some district faculty to other colleges on a temporary or part-time basis. In these cases (aside from assignments to the two integrated colleges, Loop and Truman) the administration more often than not assigned black teachers to predominantly black colleges and white teachers to predominantly white colleges.

Faculty Quality -The investigation found that, regardless of a teacher's race, the full-time faculty at the three predominantly black colleges, including those most recently hired, had significantly less graduate education and fewer years of experience before being hired than their colleagues at the other colleges. Thus, the faculty at the black colleges are far more likely to be in the lowest pay lanes. The on-site investigations at the various colleges seemed to confirm that, because of different hiring practices within the District, applicants who were less qualified, in terms of academic credentials and experience, were applying for jobs at the predominantly black colleges. Those hired at these colleges within the last three years were also less qualified than those hired for similar positions elsewhere in the District.

OCR commends CCC for working to resolve the final issue in this complaint in a conciliatory manner and for voluntarily taking the steps necessary to provide its students equal educational opportunity. CCC has agreed to actions which should strengthen its monitoring of the recruitment and hiring practices, in order to reduce racial identifiability of faculty and administrations. CCC has agreed that temporary transfer of faculty, necessary to accommodate under and over course enrollments, will be made in a manner to reduce racial identifiability of faculty. CCC has agreed to conduct a study of the average pay lane and faculty rank of its faculties to determine, more specifically, the extent to which faculty academic credentials and experience may differ among colleges. CCC has agreed to share the study with OCR and to take appropriate remedial action to remedy any disparities which the study identifies. CCC has also agreed to improved record keeping systems.

OCR will monitor the progress of the implementation of this Agreement and its effectiveness in correcting the disparities noted. Dates for the submission of all documents are contained in the Agreement itself. The initial reports should be submitted to OCR by June 30, 1984.

This Letter of Findings is not intended, and it should not be construed, to cover any other issues regarding compliance with Title VI which may exist and which are not specifically discussed herein. Please be advised that this case is being closed effective this date.

Under the Freedom of Information Act, 5 U.S.C. 552, it may be necessary to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort to protect information contained herein that identifies individuals and that, if released, would constitute an unwarranted invasion of personal privacy.

We appreciate the cooperation extended to our staff during this investigation by all the officials at your District office and at the individual colleges. We are particularly grateful to Mr. Robert Sygowski, Legal Counsel; Dr. Arnold Jones, Vice-Chancellor for Personnel, and Dr. Wynne Chaney, Vice-Chancellor for Faculty and Instruction.

At this time we would like to point out that this office is prepared to provide technical assistance in response to questions that may come up in the future regarding any of the regulations enforced by OCR. If, at any time, you or a member of your staff has a need for technical assistance, please feel free to contact Mr. James T. Heffernan, Technical Assistance Coordinator, Postsecondary Education Division, at (312) 353-3674.

If you have further questions, please do not hesitate to call me or Dr. Mary Frances O'Shea, Director, Postsecondary Education Division, at 312/353-3063.

Sincerely,

Kenneth A. Mines

Kenneth A. Mines
Regional Director

Chicago Maroon

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U of C behind in minority race

By Jeffrey Taylor

The University of Chicago rests squarely in the center of Chicago's South Side, the largest and most populous concentration of blacks in America. The vast expanse that surrounds the University is home for over a million blacks, some 40 percent of the city's total population.

Just under four percent of the University's full-time registered students, about 300, are black. There are six tenured black professors on the U of C faculty.

"It simply boggles the mind," Assistant Director of College Admissions Andre Philips said last week. "The University of Chicago could be the mecca of black thought in America and, in the Midwest, the center for black change. I still haven't figured out why it's not."

Says Harry Douglas, president of the College's Organization of Black Students (OBS), "Word on the street among qualified minorities is that the U of C is a hostile place to be if you're black."

Philips, himself a black graduate of the College, does not disagree. "The feeling out there," he says, "is that this institution doesn't want minority students and is too difficult for minority students. I recently spoke with a counselor at a predominantly hispanic high school who took great pains to tell me, 'Your institution is insensitive to the needs of the hispanic community.' "

Andre Philips

PHOTO BY E.C. MORRIS

The problem does not begin and end with image. Competition for qualified minority students is intense, and, unlike the U of C, most top schools have funds specifically earmarked to draw them. Northwestern University, located 25 miles to the North, has a concentration of black students more than twice as high as Chicago's. With its lack of both a substantive affirmative action policy and a black studies program, the University has experienced a net decline in undergraduate black enrollment of nearly 20 percent since 1976.

Philips, armed with a slick new brochure ("The Black Experience"), an aggressive recruitment strategy and what he calls an improved relationship between the offices of Admission and College Aid, hopes to change all that.

"A black student who has a chance of being admitted here has the option to go just about anyplace," Philips said. "That's a given. He has a set of options, and Chicago is one of them."

"Students who have come here and have had to get through have found that financial assistance has not been as good here as what they've gotten elsewhere. I have no argument for that. At other institutions money has been set aside. In the past, yes, maybe we lost some students because of cost who really wanted to come and who really could do it here," he said.

"The affirmative action program at the U of C is very weak," says Ted Manley, co-chairman of the University's Black Graduate Forum. "Yes, it gives everyone an equal shot at admission, but it does not specifically go out and get black, hispanic and other minority students. It's essentially a free-market type of system."

"It's appalling to me to look at the figures at the U of C, a university that is in the black belt," he said. "Of the 60 or 65 blacks who were admitted last year, 25 matriculated. Many of those who did come will never be taught by a black professor."

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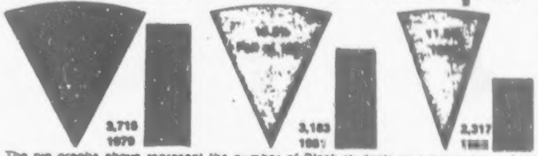
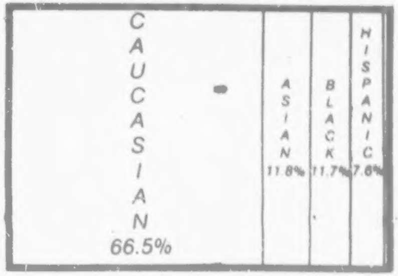
Less and less of the pie



The pie graphs above represent the number of Black students as a percentage of total enrollment. The bar graphs represent the number of Black students enrolled. Enrollment totaled 20,285, 20,800 and 19,821 for 1979, 1981 and 1983 respectively

UIC races for Fall 1983



Black enrollment drops within five year period

by Peter Spevacek

The number of Black students enrolled at UIC has plunged 38% from 3,719 students in 1979 to a 1983 Fall quarter enrollment of 2,317. Over the same period the number of Blacks as a percentage of the student body has shrunk from 18.3% of total enrollment in 1979 to 11.7% in Fall quarter.

This decline in enrollment has come over the same period of time when the University has been steadily raising admission standards and attempting to recruit "high quality" students. It had previously been believed that such efforts were not cutting into Black enrollment, but the latest figures indicate a steady drop in black enrollment at the UIC main campus.

Enrollment figures for Fall quarter are also expected to reveal a significant jump in the scores of Freshmen as based on ACT/SAT scores and class rank.

The drop in Black enrollment is attributable to many factors. As detailed last year in a COMMUTER series *From UICC to UIC* the University as a whole has been attempting to raise the quality of academic education at UIC. Significant resources have been poured into the Colleges of Business Administration and Engineering, and Graduate programs. For the most part that money has come from other areas of the University, including minority recruitment and retention programs. In addition programs that drew Black students to UIC have lost out in the budget battles. Program PM is now primarily a graduate program where it had once had a significant Black undergraduate enrollment.

THE CHICAGO STUDY OF ACCESS AND CHOICE IN HIGHER EDUCATION

A Report to The Illinois Senate Committee on Higher Education

BY
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University of Chicago, Committee on
Public Policy Studies Research Project

September 1984

CHAPTER 6

GRADUATION AND ATTRITION

Some say the college degree, like the dollar, is losing its value. Many recent graduates would probably agree once they face the tough competition of a limited job market. Yet advancements in technology coupled with the shift from an industrial-based economy to one that is service-oriented and knowledge-intensive underscores that college degree attainment has never been more important.

Success in college is an important means to economic and social mobility for those who come from disadvantaged and minority families. Studies indicate, for example, that educational attainment reduces occupational and economic differences (Freeman, 1978; Bowen, 1977, p. 187). Furthermore, higher education has become a necessary credential for entry to advanced fields and leadership positions in the professions, business, and government, where minorities historically have been excluded.

Yet despite efforts to expand educational opportunity, minorities continue to be underrepresented in higher education. Astin (1982, p. 25), likening the educational system to a pipeline, notes that disproportionately larger numbers of minorities drop out at each critical transition point - including high school completion, entry to college, and college completion. Such disparity in bachelor's degree attainment is further exacerbated because minorities tend to be concentrated in two-year and vocational programs, which can have a substantial and negative effect on educational outcomes and aspirations (Breneman and Nelson, 1981, p. 82; Olivas, 1979, p. 41; Cohen, 1982, p. 46).

This chapter examines and compares bachelor's degree attainment in the Chicago area in 1975-76 and 1980-81. It pays special attention to participation and retention of black and Hispanic students and compares them with state and national trends. In addition to bachelor's degree attainment, it studies degrees conferred at both two-year institutions and the postbaccalaureate level (master's and doctorate).

The chapter is divided into four sections. The first looks at college participation. That is, how do the number and percentage of black, Hispanic, and other students enrolled in college compare with their entire college-age population -- those age 18-24?

The second section, the primary focus of the chapter, looks at bachelor's degree attainment. It identifies how many students persist in their studies and complete their baccalaureate degree. This section presents changes in degrees conferred between 1975-76 and 1980-81 and compares by race and ethnicity. These trends then are compared with the changes in the college-age population and enrollment.

It also quantifies college completion rates and examines if attrition levels differ by race and ethnicity and by institution. Rankings are presented, not only of those institutions that graduate the largest number of black and Hispanic students but also of those with the highest completion rates.

The third section looks at associate and certificate level degree attainment. Although the primary focus of this chapter is baccalaureate degree completion, it is important to include educational opportunities provided by two-year institutions. This is because many of the students who enter two-year programs aspire to go on to complete a bachelor's degree.

Finally, the fourth section looks at graduate or advanced level degree attainment. It presents changes in the number and percentage of master's and doctorate degrees conferred by race and ethnicity over the five year period. Here, too, special attention is given to degree completion by blacks and Hispanics and how these minorities compare with their counterparts in all of Illinois and the entire United States.

Scope of Study, Data Sources

This study focuses on degrees conferred by 61 Chicago metropolitan colleges and universities, including four public universities, 32 private colleges and universities, 21 public community colleges, and four private two-year colleges (see Appendix 1). Excluded are 25 limited-purpose institutions, which tend to be smaller institutions and specialized schools such as medicine, law, theology.

The chapter relies primarily on three data sources. College-age population data are from the Bureau of the Census (1970; 1980). Degrees conferred and enrollment figures are from unpublished tabulations provided by the U.S. Department of Education, Office of Civil Rights (1976; 1981a; 1981b). And the Illinois Board of Higher Education Data Book (1983a) provides additional data on degrees conferred. The IBHE directory and its classified system for institutions are used to identify institutions located within the Chicago Standard Metropolitan Statistical Area (1983b; p. 18-19).

Participation in Higher Education

Financial barriers to college have been reduced through the availability of student financial assistance. This expanded access is reflected by large enrollment growth that has exceeded earlier projections (IBHE, 1983c, p. 7). Minorities also have benefited, as indicated by the fact that nearly half (46%) of all Illinois State Monetary Award Grants to needy students are awarded to minority students (ISSC, 1983, p. 49).

Yet, in spite of efforts to expand access, minorities continue to be underrepresented compared with their share of college-age population (age 18-24). Table 39 shows that this disparity is most pronounced for Hispanics, who represent 10.4% of all college-age population, but only 4.4% of total undergraduate enrollment. Meanwhile, blacks make up 22.2% of all Chicago metropolitan 18-24-year-olds compared with 18.0% of the undergraduate enrollment share.

Why the disparity between black and Hispanic population and undergraduate enrollment? The complete set of factors affecting minority educational progress are complex and beyond the scope of this study, but three factors are most often cited -- lower high school graduation rates, lack of academic preparation, and poorer performance on admissions tests.

Minority high school graduation data are unavailable for the Chicago metropolitan area. However, national figures show that blacks and Hispanics tend to complete high school at lower rates than other students (ACE, 1983, p. 1). Astin (1982, p.51), reports that nationally only 72% of blacks and 55 % of Hispanics finish high school compared with 83% of white students.

Moreover, minorities who graduate from high school are more likely to have difficulty gaining college entrance. Minorities tend to receive more vocational and general education courses in high school than other students (ACE, 1982, p. 8). They also tend to have lower standardized test scores (Astin, 1982, pp. 157-58; ACE, 1982, p. 8). These factors represent additional obstacles for economically disadvantaged and minority students who aspire to go on to college.

Bachelor's degree attainment

One measure of access and choice is participation--or how many students acutally enroll in college. But a more important measure

TABLE 39

CHICAGO METROPOLITAN COLLEGE-AGE POPULATION AND UNDERGRADUATE ENROLLMENT BY RACE AND ETHNICITY, 1980-81

Race	Population: Age 18-24 No.	Population: Age 18-24 %	Undergraduate College Enrollment No.	Undergraduate College Enrollment %
Black	200,943	22.2	47,077	18.8
Hispanic	94,477	10.4	10,944	4.4
White/other	610,197	67.4	191,884	76.8
Total	905,617	100.0	249,905	100.0

SOURCE--U.S. Bureau of the Census, 1980, Table 213, pp. 164-168.; U.S. Department of Education, 1981a.

NOTE--White/other includes Asians, American Indians, and nonresident aliens.

and one that more accurately reflects success is degree attainment --or how many students persist in their studies.

Research indicates that blacks and Hispanics have lower college degree completion rates than other students. According to national studies of census data, whites complete college at a rate about a third higher than among black college entrants (Astin, 1982, p. 42). Similar differences are reported between Hispanics and whites (Pasqueira, 1974; Leon, 1975; Guerra, 1970). National longitudinal survey data show similar discrepancies as blacks and Hispanics withdraw from college at higher rates than white students (NCES, 1977). Looking at bachelor degree attainment between 1975-76 and 1980-81 Trent reports that black-white parity remains a distant goal (1983, pp. 13-14).

In the Chicago metropolitan area, a smaller percentage of blacks and Hispanics complete their bachelor's degreees than other students. Table 40 shows that although blacks represent 18.8% of total undergraduate enrollment in 1980-81, they received only 12.0% of all bachelor's degrees. Meanwhile, Hispanics represented 4.4% of enrollment share, while they received 2.9% of all bachelor's degrees.

Figure 8-1 provides a snapshot comparative view of college-age population, enrollment, and bachelor's degree attainment based on data summarized in Table 40. This graph illustrates how the percentage of blacks and Hispanics falls off at each successive stage, while increasing for other students.

State and National Comparisons

Fewer blacks graduated from Chicago area bachelor's degree programs in 1980-81 than five years earlier (see Table 41).

TABLE 40

CHICAGO METROPOLITAN COLLEGE-AGE POPULATION, UNDERGRADUATE ENROLLMENT, AND BACHELOR'S DEGREES CONFERRED BY RACE AND ETHNICITY, 1980-81

Race	Population: Age 18-24 No.	Population: Age 18-24 %	Undergraduate College Enrollment No.	Undergraduate College Enrollment %	1980-81 Bachelor's Degrees Conferred No.	1980-81 Bachelor's Degrees Conferred %
Black	200,943	22.2	47,077	18.8	2,033	12.0
Hispanic	94,477	10.4	10,944	4.4	498	2.9
White/other	610,197	67.4	191,884	76.8	14,384	85.0
Total	905,617	100.0	249,905	100.0	16,915	100.0

SOURCE--U.S. Bureau of the Census, 1980, Table 213, pp. 164-168; U.S. Department of Education, 1981a.

NOTE--White/other includes Asians, American Indians, and nonresident aliens. Figures do not always total 100% because of rounding.

Table 41, shows that the number of bachelor's degrees conferred to blacks by Chicago metropolitan colleges and universities declined by 3.7% (from 2,112 to 2,033) between 1975-76 and 1980-81. In contrast, bachelor's degrees to blacks increased by 2.4% in the United States, while rising .4% in Illinois.

At the same time, Hispanics received a larger number of bachelor degrees in the Chicago area, as well as statewide and nationally.

The decline in the number of bachelors degrees awarded to blacks also resulted in a decline in the percentage of bachelors going to blacks. Table 42 shows that blacks received 12.0% of all bachelor's degrees awarded in the Chicago metropolitan area in 1980-81 compared with 12.7% in 1975-76. Meanwhile, on the state and national level, there was no change in the percentage of bachelor's degrees awarded to blacks.

Changes in Population and Degrees

Looking at degree attainment by percentage change alone can be misleading, especially for blacks and Hispanics, where the absolute numbers are small. For instance, Hispanics received only 2.6%, or

TABLE 41

BACHELOR'S DEGREES CONFERRED BY RACE/ETHNICITY FOR UNITED STATES, ILLINOIS, AND CHICAGO METROPOLITAN AREA 1975-76 TO 1980-81

	1975-76	1980-81	Change in No. of Degrees	Percentage Change
Black:				
United States	59,122	60,533	+ 1,411	+ 2.4%
All of Illinois	3,240	3,254	+ 14	+ .4
Chicago area	2,112	2,033	- 79	- 3.7
Hispanic:				
United States	17,964	21,751	+ 3,787	+ 21.1
All of Illinois	542	724	+ 182	+ 33.6
Chicago area	427	498	+ 71	+ 16.6
White/other:				
United States	841,302	849,299	+ 7,997	+ 1.0
All of Illinois	40,821	40,489	- 332	- .8
Chicago area	14,071	14,384	+ 313	+ 2.2

SOURCE--U.S. Department of Education, 1976; 1981b.

NOTE--White/other includes Asians, American Indians, and nonresident aliens.

427, of all Chicago metropolitan bachelor's degrees in 1975-76. This number increased by 16.6% by 1980-81, but in actual numbers, only 71 more degrees were awarded.

Changing demographics also cannot be ignored. College-age population is growing fastest for blacks and Hispanics. In the Chicago metropolitan area the number of blacks and Hispanics between the ages of 18 and 24 increased 1.8% and 2.1%, respectively, between 1975 and 1980. The remainder of the college-age population dropped 4.0%.

How do degree attainment trends compare with this shift in college-age population? Table 43 shows that, in light of growth in black and college-age population, the underrepresentation of black baccalaureate graduates in the Chicago metropolitan area becomes even more significant. Between 1975-76 and 1980-81 the percentage of bachelor's degrees awarded to blacks decreased .7% (from 12.7% to 12.0%), while the college-age cohort grew 1.8% (from 20.4% to 22.2%). Likewise, Hispanic degree attainment also did not keep pace with its growing Chicago metropolitan college-age population. During this same five-year period the percentage of bachelor's degrees conferred to Hispanics increased .3% (from 2.6% to 2.9%), while the college-age cohort grew 2.1% (from 8.3% to 10.4%).

TABLE 42

PERCENTAGE OF BACHELOR'S DEGREES CONFERRED BY RACE/ETHNICITY FOR UNITED STATES, ILLINOIS AND CHICAGO METROPOLITAN AREA, 1975-76 TO 1980-81

	% 1975-76	% 1980-81
Black:		
United States	6.4	6.4
All of Chicago	7.3	7.3
Chicago area	12.7	12.0
Hispanic:		
United States	2.0	2.3
All of Illinois	1.2	1.6
Chicago area	2.6	2.9
White/other:		
United States	91.6	91.2
All of Illinois	91.5	91.1
Chicago area	84.7	85.0

SOURCE--U.S. Department of Education, 1976; 1981b.

NOTE--White/other includes Asians, American Indians, and nonresident aliens. Figures do not always total 100% because of rounding.

Meanwhile, the college-age population of the remaining non-black, non-Hispanic population declined by 4.0% (from 71.4% to 67.4%). At the same time, bachelor's degrees conferred to this group increased slightly (from 84.7% to 85.0%).

Public-Private Distribution

A larger number of blacks and Hispanics earn their bachelor's degree from private institutions than from public institutions. Table 44 shows that 1,128 blacks (55%) received their bachelor's degrees from a private Chicago metropolitan institution compared with 905 blacks (45%) who graduated from public institutions. Similarly, slightly more than half (53%) of the 498 Hispanic students graduated from private institutions.

Graduation Ratio

To determine the proportion of students who graduated over a four-year period, this section looks at degrees conferred as a percentage of undergraduate enrollment at four-year institutions. This ratio then is multiplied by four to approximate the graduation rate as it would occur over a four-year period. This facilitates a comparative analysis of graduation rates by race and ethnicity.

TABLE 43

PERCENTAGE OF COLLEGE-AGE POPULATION AND BACHELOR'S DEGREES CONFERRED BY RACE/ETHNICITY FOR UNITED STATES, ILLINOIS, AND CHICAGO METROPOLITAN AREA 1975-76 TO 1980-81

	1975-76		1980-81		Percentage Change 1975-76 to 1960-81	
	% Population: Age 18-24	% Degrees Confer'd	% Population: Age 18-24	% Degrees Confer'd	% Population: Age 18-24	% Degrees Confer'd
Black:						
United States	12.3	6.4	13.0	6.4	+ .7	.0
All of Ill.	14.8	7.3	16.1	7.3	+ 1.3	.0
Chicago area	20.3	12.7	22.2	12.0	+ 1.9	- .7
Hispanic:						
United States	6.4	2.0	7.5	2.3	+ 1.1	+ .3
All of Ill.	5.6	1.2	6.9	1.6	+ 1.3	+ .4
Chicago area	8.2	2.6	10.4	2.9	+ 2.2	+ .3
White/other:						
United States	81.3	91.6	79.5	91.2	- 1.8	- .4
All of Ill.	79.7	91.5	76.9	91.1	- 2.8	- .4
Chicago area	71.4	84.7	67.4	85.0	- 4.0	+ .3

SOURCE--U.S. Bureau of the Census, 1970, Table 215, pp. 679-681, Table 164, pp. 945-947, Table 164, pp. 949-951; 1980, Table 41, p. 23, Table 213, pp. 159-163, Table 213, pp. 164-168; U.S. Department of Education, 1976; 1981b.

NOTE--White/other includes Asians, American Indians, and nonresident aliens. 1970 Census data is used to determine 1975 population; a constant growth rate between 1970 and 1980 is assumed.

TABLE 44

BACHELOR'S DEGREES CONFERRED BY RACE/ETHNICITY AT CHICAGO METROPOLITAN PUBLIC AND PRIVATE INSTITUTIONS, 1980-81

	Black		Hispanic		White/other	
	No.	%	No.	%	No.	%
Public	905	45	236	47	3,223	22
Private	1,128	55	264	53	11,161	78

SOURCE--U.S. Department of Education, 1981b.

NOTE--White/other includes Asians, American Indians, and nonresident aliens.

To illustrate, consider that Chicago metropolitan four-year colleges conferred about 15, 766 bachelor's degrees in 1980-81. This represents about .17 of their total undergraduate enrollment of 92,114 during the same year. Multiplying this ratio by four provides an approximation of the proportion of students who graduate over a four-year period. In other words, about .68 or nearly seven out of 10 students go on to graduate.

Caveats

Before presenting and analyzing graduation ratio findings, several caveats should be considered. First, these ratios represent a snapshot view of 1980-81 and therefore do not track a group of students from enrollment to graduation. Nor do they account for transfer patterns in and among institutions. Finally, because the enrollment data is based on head count, it does not adjust for variation in the mix of full-time and part-time students.

In spite of these methodological problems, calculating graduation ratios provides a useful measure of degree productivity as well as a way to compare college completion rates by race and ethnicity.

Minority Retention

Blacks and Hispanics attending Chicago metropolitan four-year colleges have lower bachelor degree attainment rates than other students. Graduation ratios presented in Table 45 show that about five out of 10 black students (.51) go on to receive their baccalaureate degree compared with four out of 10 Hispanics (.41). Meanwhile, about eight out of 10 other students (.81), including whites, Asians, American Indians, and nonresident aliens, receive baccalaureates.

Although minorities have lower retention rates, irrespective of institutional choice, ratios do differ between private and public colleges. Again, Table 45 shows that about six out of 10 blacks (.61) attending Chicago metropolitan private four-year colleges go on to graduate compared with about four out of 10 blacks (.43) at public institutions.

For Hispanics, the difference in graduation ratios between public and private institutions is greater. About five out of 10 Hispanics (.47) complete their bachelor's degree from private colleges compared with about four out of 10 (.37) in public institutions.

Degrees Conferred by Institution

So far, this study has presented data on bachelor degree attainment in aggregate, summarizing the distribution and changes over time. This section looks at individual institutions and identifies those colleges that graduate the largest number and percentage of blacks and Hispanics. To do this, it ranks institutions by two criteria: (1) those that graduate the most students, and (2) those that demonstrate the highest graduation ratios, thus suggesting that minorities at these institutions have the best chance of persisting with their studies.

TABLE 45

GRADUATION RATIOS: BACHELOR'S DEGREES ATTAINMENT RATES BY RACE/ETHNICITY FOR CHICAGO METROPOLITAN PRIVATE AND PUBLIC COLLEGES, 1980-81

	1980-81 Bachelor's Degrees Conferred	Fall 1980 Undergraduate Enrollment	Graduation Ratios
Black:			
Private	1,128	7,456	.61
Public	905	8,378	.43
Total	2,033	15,834	.51
Hispanic:			
Private	264	2,267	.47
Public	234	2,551	.37
Total	498	4,818	.41
White/other:			
Private	11,161	51,558	.87
Public	3,223	19,904	.65
Total	14,384	71,462	.81
All students:			
Private	12,553	61,281	.82
Public	4,362	30,833	.57
Total	16,915	92,114	.73

SOURCE--U.S. Department of Education, 1981a; 1981b.

NOTE--Graduation ratios are based on attainment rates for a single year (degrees divided by enrollment multiplied times four). White/other includes Asians, American Indians, and nonresident aliens.

Tables 46 and 47 rank the top 10 institutions that graduate the largest number of blacks and Hispanics, respectively. The fact that minorities tend to live and go to college in the city is further substantiated by the concentration of degrees conferred to blacks and Hispanics in urban institutions. For blacks, Governors State and Northwestern are the only suburban institutions ranking in the top 10. For Hispanics, only three out of 10 institutions are located out of the city--Elmhurst, Governors State, and Northwestern.

TABLE 46

TOP 10 INSTITUTIONS FOR BACHELOR'S DEGREES CONFERRED TO BLACKS BY CHICAGO METROPOLITAN COLLEGES 1980-81

	Degrees Conferred
1. Chicago State	478
2. Roosevelt	283
3. University of Illinois at Chicago	199
4. Columbia	136
5. Northeastern	129
6. DePaul	124
7. Northwestern	121
8. Loyola	100
9. Governors State	99
10. National College of Education - Urban	61

SOURCE--U.S. Department of Education, 1981b.

TABLE 47

TOP 10 INSTITUTIONS FOR BACHELOR'S DEGREES CONFERRED TO HISPANICS BY CHICAGO METROPOLITAN COLLEGES, 1980-81

	Degrees Conferred
1. University of Illinois at Chicago	109
2. Northeastern	89
3. Loyola	57
4. DePaul	52
5. Chicago State	21
6. Elmhurst	17
7. Governors State	16
8. Mundelein	16
9. Northwestern	16
10. Illinois Institute of Technology	14

SOURCE--U.S. Department of Education, 1981b.

Ranking by total degrees conferred provides one measure of minority access and completion. However, it tends to focus on larger institutions, which by virtue of their size graduate a larger number of students. It also overlooks efficiency, or degree productivity. For instance, colleges with stronger student support services such as academic and career counseling may retain a larger portion of their student bodies.

To measure degree productivity, Tables 48 and 49 rank the top 10 Chicago metropolitan institutions that have the highest graduation ratios (degrees conferred as a percentage of undergraduate enrollment). These rankings, again for both blacks and Hispanics, differ markedly from those of most degrees conferred, which were presented in Tables 46 and 47. Table 48 includes only five of the same institutions that graduated the highest number of black baccalaureates. Roosevelt, National College of Education (Urban), Governors State, DePaul, and Northwestern remain in the top 10 on both lists. Meanwhile, three suburban private colleges--Lake Forest, Illinois Benedictine, and Concordia--enter the top 10 list when degree productivity is considered.

Table 49 shows that, for Hispanics, only six of those institutions that graduated the most Hispanic students also graduated the highest percentage of their Hispanic enrollment. Governors State, Chicago State, DePaul, Northwestern, Mundelein, and Loyola remain in the top 10 on both lists. Here again, three suburban private colleges--this time Rosary, North Central, and Aurora--enter the top 10 list when degree productivity is taken into consideration.

TABLE 48

TOP 10 INSTITUTIONS FOR BACHELOR'S DEGREES CONFERRED TO BLACKS AS A PERCENTAGE OF BLACK ENROLLMENT IN CHICAGO METROPOLITAN COLLEGES 1980-81

	% Degrees to Enrollment	Degrees Conferred
1. National College of Education - Urban	35.3	61
2. Governors State	29.7	99
3. George Williams	24.0	23
4. Lake Forest	21.9	16
5. Illinois Benedictine	21.7	5
6. Concordia	20.7	6
7. DePaul	17.7	124
8. St. Xavier	17.5	17
9. Northwestern	17.2	121
10. Roosevelt	17.0	283

SOURCE--U.S. Department of Education, 1981b.

Associate and Certificate Degree Attainment

The success of two-year colleges in graduating their students is linked to baccalaureate degree attainment insofar as many students enter junior college in hopes of going on to a four-year program. This is particularly the case for lower-income and minority students, who are more concentrated in two-year programs (Cohen and Brawer, 1982, p. 46; Olivas, 1979, p. 28). Although the primary focus of this study is bachelor degree completion, this section looks at the distribution of and changes in associate degree and certificate award attainment in the Chicago metropolitan area.

TABLE 49

TOP 10 INSTITUTIONS FOR BACHELOR'S DEGREES CONFERRED TO HISPANICS AS A PERCENT OF HISPANIC ENROLLMENT IN CHICAGO METROPOLITAN COLLEGES, 1980-81

	% Degrees to Enrollment	Degrees Conferred
1. Rosary	30.8	8
2. North Central	27.3	6
3. Governors State	24.6	16
4. Chicago State	19.3	21
5. DePaul	16.9	52
6. Aurora	15.8	6
7. Northwestern	14.2	16
8. University of Chicago	13.6	8
9. Mundelein	13.3	16
10. Loyola	12.7	57

SOURCE--U.S. Department of Education, 1981b.

NOTE--Institutions with less than five Hispanic degrees conferred were excluded from the ranking.

Table 50 shows that the 25 Chicago metropolitan two-year colleges graduated 15,627 students in 1980-81. This represents about half (48%) of all undergraduate diplomas. At the same time, two-year institutions enrolled 157,791 students, or about 63% of all undergraduate enrollment.

A larger portion of Chicago metropolitan area students are graduating from two-year programs than bachelor's degree programs compared with five years ago. Table 51 shows that the number of associate and certificate diplomas increased by 12.1% (from 13,943 to 15,627) between 1975-76 and 1980-81, while bachelor's degrees increased 1.8% (from 16,610 to 16,914) during the same period.

A slightly higher proportion of blacks graduate from two-year programs than from baccalaureate degree programs. Whereas about six out of 10 blacks (59%) receive associate degrees or certificate awards, about five out of 10 Hispanics (51%) and a similar number of whites and other students (46%) do so.

For blacks, a growth in the number of two-year diplomas was accompanied by a simultaneous decline in the number of bachelor's degrees. Table 51 shows that, between 1975-76 and 1980-81, the number of blacks receiving associate and certificate diplomas increased 12.2% (from 2,587 to 2,902) while the number of bachelor's degrees declined by 3.7% (from 2,112 to 2,033).

TABLE 50

DISTRIBUTION OF UNDERGRADUATE ENROLLMENT AND DEGREES CONFERRED BETWEEN TWO-YEAR AND FOUR-YEAR CHICAGO METROPOLITAN INSTITUTIONS, 1980-81

	Enrollment		Degrees Conferred	
	No.	%	No.	%
Associate degrees and certificate awards (two-year institutions)	157,791	63	15,627	48
Bachelor's degrees (four-year institutions)	92,114	37	16,914	52
Total undergraduate	249,905	100	32,541	100

SOURCE--U.S. Department of Education, 1981a; 1981b.

TABLE 51

DEGREES CONFERRED AT BACHELOR'S AND ASSOCIATE LEVELS AND BY RACE/ETHNICITY IN CHICAGO METROPOLITAN COLLEGES, 1975-76 TO 1980-81

	1975-76	1980-81	No. Change	Percentage Change
Associate degree certificates:				
Black	2,587	2,902	+ 315	+ 12.2
Hispanic	305	522	+ 217	+ 71.1
White/other	11,053	12,203	+1,150	+ 10.4
Total	13,943	15,627	+1,684	+ 12.1
Bachelor's degrees:				
Black	2,112	2,033	- 79	- 3.7
Hispanic	427	498	+ 71	+ 16.6
White/other	14,071	14,383	+ 312	+ 2.2
Total	16,610	16,914	+ 304	+ 1.8

SOURCE--U.S. Department of Education, 1976; 1981b.

NOTE--White/other includes Asians, American Indians, and nonresident aliens.

Graduate Degree Attainment

Lower high school graduation rates, higher college attrition, and concentration in two-year and vocational degree programs all result in a continued underrepresentation of minorities at the postbaccalaureate level. According to an American Council on Education study (1982, p.13) on the progress of minorities in higher education, the number of blacks enrolling in graduate and professional schools is cause for concern. Study findings include that between 1976 and 1980 both the number and percentage of blacks and Native Americans enrolled in graduate school declined. During this same period, the number of blacks receiving master's degrees declined 16%, four times more than the decline for nonblacks (Hill, 1983, p. 14).

This reported national decline in minority participation at the post-baccalaureate level also has occurred in the Chicago metropolitan area. In fact, a comparison of master's and doctorate degree attainment in the Chicago area with that of state and national trends indicates that, in certain instances, the Chicago metropolitan area has experienced greater erosion.

Master's Level

Fewer blacks received master's degrees in 1980-81 than in 1975-76. This decline occurred not only at the national and state levels but within the Chicago metropolitan area. Table 52 shows that, during this five-year period, the number of master's degrees conferred to blacks in the Chicago area declined by 23.2% (from 1,123 to 863), by 29.7% throughout the state of Illinois (from 1,554 to 1,093), and by 15.8% across the United States (from 20,345 to 17,133).

Similarly, the proportion of black master degree graduates also declined at all three levels. Chicago metropolitan institutions experienced the sharpest declines relative to their position five years earlier. Table 52 shows that by 1980-81 the percentage of master's degrees to blacks dropped 3.2% in the Chicago metropolitan area (from 13.1% to 9.9%) compared with a 2.1% decline throughout Illinois (from 8.8% to 6.7%) and a .8% decline in the entire United States (from 6.6% to 5.8%).

Meanwhile, for Hispanics, the number and percentage of master's degrees conferred remained virtually unchanged in the Chicago metropolitan area, while increasing at the state and national levels. The proportion of master's degrees conferred to Hispanics at Chicago metropolitan institutions remained at 1.6%, compared with a .4% increase throughout Illinois (from 1.1% to 1.5%) and a .5% increase across the United States (from 1.7% to 2.2%).

TABLE 52

NUMBER AND PERCENTAGE OF MASTER'S DEGREES CONFERRED BY RACE/ETHNICITY IN UNITED STATES, AND CHICAGO METROPOLITAN AREA 1975-76 TO 1980-81

	1975-76		1980-81	
	No.	%	No.	%
Black:				
United States	20,345	6.6	17,133	5.8
All of Illinois	1,554	8.8	1,093	6.7
Chicago metro	1,123	13.1	863	9.9
Hispanics:				
United States	5,299	1.7	6,461	2.2
All of Illinois	203	1.1	246	1.5
Chicago Metro	134	1.6	143	1.6
White/other:				
United States	283,619	91.7	270,588	92.0
All of Illinois	15,962	90.1	15,083	91.8
Chicago metro	7,333	85.4	7,670	88.4

SOURCE--U.S. Department of Education, 1976; 1981b.

NOTE--White/other includes Asians, American Indians, and nonresident aliens. Figures do not always total 100% because of rounding.

Finally, the number of master's degrees conferred to nonblack and non-Hispanic students increased in the Chicago metropolitan area while declining at both the state and national levels. Table 53 shows that the number of master's degrees to white and other students (including Asians, American Indians, and nonresident aliens) rose 4.6% (from 7,333 to 7,670) during this five-year period.

Doctorate Level

Both the number and percentage of doctorate degrees conferred to blacks declined at Chicago metropolitan colleges and universities, while increasing at the state and national levels. Table 53 shows that the number of doctorate degrees conferred to blacks in the Chicago area decreased by 28.1% (from 32 to 23) between 1975-76 and 1980-81. Meanwhile, the number of graduating black doctorates increased by 28.9% for the entire state of Illinois (from 76 to 98) and by 4.3% in the United States (from 1,213 to 1,265).

At the same time, Chicago metropolitan colleges and universities conferred a smaller percentage of doctorate degrees to blacks than either all of Illinois or the United States, although the black population is larger

TABLE 53

NUMBER AND PERCENTAGE OF PH.D. DEGREES CONFERRED BY RACE/ETHNICITY IN UNITED STATES, ILLINOIS, AND CHICAGO METROPOLITAN AREA, 1975-76 TO 1980-81

	1975-76		1980-81	
	No.	%	No.	%
Black:				
United States	1,213	3.6	1,265	3.8
All of Illinois	76	3.8	98	4.8
Chicago area	32	3.5	23	2.6
Hispanic:				
United States	396	1.2	479	1.5
All of Illinois	9	.4	26	1.3
Chicago area	5	.6	3	.3
White/other:				
United States	32,178	95.2	31,119	94.7
All of Illinois	1,940	95.8	1,919	93.9
Chicago area	871	95.9	865	97.1

SOURCE--U.S. Department of Education, 1976; 1981b.

NOTE--White/other includes Asians, American Indians, and nonresident aliens.

the Chicago area. Blacks represented 2.6% of all Chicago etropolitan doctorate degrees conferred in 1980-81, down from 3.5% 975-76. This percentage of black doctoral graduates is below Illinois (4.8%) and the United States (3.8%).

Only three Hispanics graduated with doctorate degrees from ago metropolitan colleges and universities in 1980-81, down from tal of five in 1975-76. Table 53 shows that a decline in both umber

percentage of Chicago area Hispanic doctoral graduates rred, while the entire state of Illinois and United States erienced increases.

Conclusion

Access and equal educational opportunity can be measured by cipation, or enrollment. But a more important measure and one more accurately reflects success is degree attainment, or who ates.

examination of bachelor's degree attainment in the Chicago area reveals three findings. First, a smaller percentage of black and Hispanic college students attain their baccalaureate degree compared withother students. Second, between 1975-76 and 1980-81, bachelor's degree attainment for blacks and Hispanics declined in comparison with growth in their respective college-age population. And third, the number of bachelor's degrees conferred to blacks during this same period declined, despite growth in the college-age cohort. Specifically, this chapter reports the following findings: Blacks received 12.0% of all bachelor's degrees in 1980-81, while representing 18.8% of total Chicago metropolitan undergraduate enrollment. Hispanics received 2.9% of all bachelors compared with 4.4% of enrollment share. The percentage of bachelor's degrees conferred to blacks declined by .7% (from 12.7% to 12.0%) between 1975-76 and 1980-81, while black college-age population rose 1.9% (from 20.3% to 22.2%). The Hispanic share of bachelor's degrees during this period rose .3% (from 2.6% to 2.9%), while its college-age cohort rose 1.2% (from 8.2% to 10.4%). The number of bachelor's degrees to blacks declined 3.7% (from 2,112 to 2,033) during the five-year period studied, while at the state and national levels little or no change was reported.

Why this disparity in degree attainment? Data indicate that this gap in baccalaureate degrees conferred occurs not only because blacks and Hispanics have higher attrition rates within four-year institutions but also because these minorities are more concentrated in two-year institutions. A comparison of degrees conferred with enrollment at four-year institutions shows lower graduation ratios for blacks and Hispanics. The maldistribution of minorities in two-year programs is illustrated by the fact that, while fewer blacks received bachelor's degrees, a larger number of blacks received associate degree and certificate awards.

In addition, the study finds that minorities tend to be more concentrated in urban institutions than suburban institutions and that more than half of all blacks and Hispanics receive their baccalaureate from private colleges or universities.

Finally, at the postbaccalaureate level, minorities are even less respresented in terms of degrees conferred. The reported national decline in minority participation in graduate and profession schools also has occurred in the Chicago metropolitan area. In fact, a comparative look at master's and doctorate degree attainment with state and national trends indicates that, in certain instances, the Chicago area has experienced greater erosion.

PART II
PATTERNS AND CAUSES OF INEQUALITY

Mr. HAYES. Thank you.

Miss Josephine Holzer.

Mrs. HOLZER. Thank you. My name is Josehine Holzer and I am here on behalf of the Council for Disability Rights, to represent people with disabilities and their families. We are pleased to have this opportunity to appear before these two committees of the U.S. House of Representatives as they hear testimony relating to H.R. 700.

Before I begin my summarized comments, I would like to make an observation, which, of course, I made when I wrote this and I didn't see who was in front of me. But in the process of reading the names on the committee roster of supporters, it seemed to me, knowing also the composition of the House, that we would be speaking to white, able bodied males. There is some variety up there, I'm glad to see.

Mr. HAYES. Would you pull the mike up. I don't want to miss this good testimony. [Laughter.]

Mrs. HOLZER. I will try to speak a little louder. I'm sorry.

We, the so-called protected groups, are here speaking to you—who are not seemingly members of these protected groups, as I wrote—to demand that you restore these protections for us. Most of the component parts of our society—housing, business, industry, education and goverment, et cetera—are controlled by nonelderly, white, able bodied males. We are here to speak on behalf of all of those who are neither white, nor able bodied, nor males, nor under 65 years of age.

I intend no insult there, gentlemen. I'm just trying to stick to the facts.

Personally, I would like to state that my youngest daughter has a very rare congenital orthopedic disability which causes her at this age in her life to rely upon an electric wheelchair for mobility. I would like very briefly to run through some of her educational history.

She has attended regular schools all her life. When she entered kindergarten in the public school system in the suburbs where we live in 1971, there was no Federal legislation to protect her. Fortunately, she passed the personal examination with the special education personnel because she's a very spunky kid, and at that point was still ambulatory. They permitted her to stay in that school system.

If she had not, however, passed that evaluation, on the strength of her personality and persistence, we wouldn't really have had any recourse. There was no 504 at that point in time.

Our school system only has one high school. When Margaret was in the eighth grade we began discussions with the administration about high school. Now, at this time, she was under the protection of both Public Law 94-142 and section 504 of the Rehab Act. This only high school was not accessible to her, and no plans were being made to make it accessible—remembering now that she had been in the system for 9 years, as a very obvious physically disabled child.

The school wanted to send her to another county, to an accessible high school, where neither she nor we knew anyone. So we filed a complaint with the Office of Civil Rights under section 504. Although the resolution of the complaint was not swift, it was, indeed, sure. The school is now totally accessible and barrier free, thanks to section 504 and the Office for Civil Rights. Without this protection, however, no person in our district in a wheelchair could have used that public facility. No grandparent, parent, teacher, sibling, or guest who is in a wheelchair could enter and participate in any event in that community high school facility. Incidentally, it also has a gymnasium and swimming pool that is available to the public.

In principle, our organization believes that a free appropriate public education is guaranteed by Public Law 94-142 and, as protected by section 504, is absolutely critical for children with disabilities. Without this protection, and without this kind of educational opportunity, these children grow to adulthood with no skills, with no further opportunities, and with no real options, really with no foreseeable employment or advancement. They will have only an adult prospect of living communally and of living on Government handouts, often called benefits, for reasons that escape me.

From the national press we understand that some people in our Nation's capital believe that discrimination no longer exists, that it has been cured or killed. We are here to tell you, in clear, united voices, that discrimination lives. It has triumphed over past efforts to kill it; that it, more than anything else, demeans each of us. It is discrimination, not our condition or differentness from you that makes our lives less than they could, or, indeed, should be.

Designs for Change, a nonprofit research corporation here in Chicago, has submitted materials for each committee chairman, which I have under the microphone, that specify the extent of certain kinds of discrimination within the educational system here in Illinois. We submit these clear facts for your consideration of our reality.

During our recent research on this bill we have had lengthy discussions with one of the attorneys from the Chicago Lawyers' Committee for Civil Rights Under Law, Inc. She is out of the country at this time but has agreed to append a statement to our testimony, which you have.

Essentially, we together want to underscore the need to protect the private right to action. In fact, we would like to stress the importance of a clear legislative history on this particular point, that the conscious policy choice has been made that the private litigant is to be the primary enforcer of the rights guaranteed by these laws. We therefore urge you to raise the umbrella to cover all of us again and to leave clear evidence in your legislative history that private litigation is to be the primary means of enforcement, along with its full range of relief.

Can we, in good conscience, in a free society, permit discrimination? Can we, in good conscience, as a free enterprise society, permit the loss of so much human potential? In fact, can we continue to afford to provide handouts as opposed to opportunities, housing, employment, transportation, et cetera?

This is not to mention the issue of human dignity. As a parent, I must tell you that this single issue causes me the greatest concern. When I see the look on the faces of other people as they are confronted by disablity issues, I can only say to myself, "They are wrong and we are right." The issue of disability is an emotional issue, unfortunately. I say unfortunately because emotions all too often cloud reality, here as elsewhere. But logic, reason, and facts are on the side of the disabled community. Emotions, in fact, are against us. Some people use emotions to benefit the disabled—for example, in telethons, poster child campaigns, et cetera—but in so doing, they demean the human dignity of every person with a disability.

On behalf of my family and the people with whom I choose to work, I challenge you. Think clearly and leave emotions out of your considerations. Emotions will only damage our position. There are some 35 million people with disabilities in this country. One can even extrapolate from statistical data that approximately one in every three households will have one person with a disability. We are merely the disabled community. There are, too, all the others that are protected by this law. We all pray that you have the will and the courage and the required stamina to pass this bill.

Thank you for allowing us to appear before you.

[The prepared statement of Josephine Holzer with attachments follows:]

COUNCIL FOR DISABILITY RIGHTS 343 South Dearborn/Room 318 • Chicago, Illinois 60604
922 1093 v/tty

RESOURCE COUNCIL
Henry B. Betts, M.D.,
Executive Vice President and Medical Director Rehabilitation Institute of Chicago
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Mary Jeanne (Dolly) Hallstrom,
State Representative
Robert A. Henderson,
Professor of Special Education and Educational Administration, University of Illinois
Ellis Levin, Esq.
State Representative
Ray Meyer,
Coach, DePaul University
Newton Minow, Esq.
Lee Phillip,
Broadcaster
Kent Smith
Executive Director Spina Bifida Association
Wallace Winter, Esq.

Cong. Augustus Hawkins
Cong. Don Edwards
Room 806, Annex 1
Washington, D C 20515

March 15, 1985

Dear Chairmen:

This letter is a cover letter for the testimony being presented by Josephine Holzer on our behalf. Our Board of Directors is in agreement with the thrust of this bill, H R 700, as it seeks to restore the civil rights protections in the four major civil rights bills.

Thank you for this opportunity to speak.

Sincerely,

James McGovern jh

James McGovern
President

PREPARED STATEMENT OF JOSEPHINE HOLZER ON BEHALF OF THE COUNCIL FOR DISABILITY RIGHTS

My name is Josephine Holzer; I am here on behalf of the Council for Disability Rights to represent people with disabilities and their families. We are pleased to have this opportunity to appear before these two Committees of the United States House of Representatives as they hear testimony relating to H R 700, the Civil Rights Restoration Act of 1985. Before I begin my summarized comments, I would like to make an observation. The bill we are here to consider aims to restore federal legislation that protects the civil rights of a large number of Americans by prohibiting discrimination against any person on account of race, color, national origin, sex, disability, or age. My observation is that we, the so called protected groups, are here speaking to you -- who are not seemingly members of these protected groups -- to demand that you restore these protections for us. Most of the component parts of our society -- housing, business, industry, education, government, etc. -- are controlled by nonelderly white able bodied males. We are here to speak on behalf of all those who are neither white, nor able bodied, nor males, nor under sixty five years of age.

Personally, I would like to state that my youngest daughter has a very rare congenital orthopedic disability which causes her to rely upon an electric wheelchair for mobility. Briefly let me tell you about some of her educational history:

Margaret has attended regular schools all of her life. When she entered kindergarten in the public school system in 1971 there was no federal law to protect her. Fortunately her spunky nature carried her through the evaluation with special ed personnel and she was allowed to attend the same school her sisters were attending; that is, she was considered able bodied enough to handle the physical environment. (She was not then in a wheelchair.) If she had not passed the evaluation, she would have been denied placement in that school. Without the protection of Section 504 at that time, we would have been powerless to challenge the school on her placement: we had no recourse without Section 504.

Our school system has only one high school. When Margaret was in the eighth grade, we discussed the high school with the administration. At this time, Margaret was under the protection of both P L 94 142 and Section 504 of the Rehab Act. The high school was inaccessible to her and no plans were being made to make it accessible -- she had been in this system for nine years . The school wanted to send her to another county to an accessible high school -- where she and we knew no one. We filed a complaint with the Office for Civil Rights under Section 504. Although the resolution of the complaint was not swift, it was sure. The school is now totally accessible and barrier free, thanks to Section 504 and the Office for Civil Rights. Without this protection, no person in our district in a wheelchair could have used that public facility -- no grandparent, parent, teacher, sibling, or guest who is in a wheelchair could enter and participate in any event in that community high school facility.

In principle, CDR believes that a free appropriate public education -- as guaranteed by P L 94 142 and as protected by Section 504 -- is absolutely critical for children with disabilities. Without this protection and without this kind of educational opportunity, these children will grow to adulthood with no skills, with no further opportunities, with no real options, with no foreseeable employment or advancement -- they will have only an adult prospect of living communally and of living on government hand outs, often called benefits, for reasons that escape me.

And now a few comments on the law itself.

From the national press, we understand that some people in our nation's capitol believe that discrimination no longer exists, that it has been cured -- or killed. We are here to tell you in clear united voices that discrimination lives, has triumphed over past efforts to kill it! That it more than anything else demeans each of us: it is discrimination, not our condition or differentness from you, that makes our lives less than they could -- or indeed should be! Designs for Change, a nonprofit research corporation here in Chicago, has submitted materials for each committee chairman that specify the extent of certain kinds of discrimination within the educational system here in Illinois. We submit these clear facts for your consideration of our reality.

During our recent research on this bill, we have had lengthy discussions with one of the attorneys from the Chicago Lawyers' Committee for Civil Rights Under Law Inc.; she is out of the country at this time, but has agreed to append a statement to our testimony. Essentially, we want to underscore the need to protect the right to private action. In fact we would like to stress the importance of clear legislative history on this particular point: that the conscious policy choice has been made that the private litigant is to be the primary enforcer of the rights guaranteed by these laws. We therefore urge you to raise the umbrella to cover all of us again and to leave clear evidence that private litigation is to be the primary means of enforcement along with its full range of relief. (See CongRec-Senate, February 7,1985,column 1:Enforcement.)

Can we in good conscience as a free society permit such discrimination? Can we in good conscience as a free enterprise society permit the loss of so much human potential? In fact, can we continue to afford to provide hand outs as opposed to opportunities, housing, employment, transportation, etc.? Not to mention the issue of human dignity: as a parent I must tell you that this single issue causes me the greatest concern. When I see the look on the faces of other people as they are confronted by disability issues, I can only say to myself, "They are wrong; we are right." The issue of disability is an emotional issue -- unfortunately. I say unfortunately because emotions all too often cloud reality, here as elsewhere. But logic, reason, facts are on the side of the disabled community; emotions are against us. Some people use emotions to benefit the disabled (e.g.,in telethons, poster child campaigns, etc.), but in so doing they demean the human dignity of every person with a disability.

On behalf of my family and the people with whom I choose to work, I challenge you: think clearly and leave emotions out of your considerations. Emotions will only damage our position. There are some thirty-five million people with disabilities in this country. One can even extrapolate from statistical data that approximately one in every three households will have one person with a disability. And we are merely the disabled community. There are, too, all the others who are protected by this law. We all pray you have the will and the courage and the required stamina to pass this bill.

Thank you for allowing us to appear before you.

Testimony for the
Joint Hearing of Committees on
Education and Labor and on Judiciary
March 15, 1985
Chicago

My name is Kate Yannias. I am an attorney with the Chicago Lawyers' Committee for Civil Rights Under Law, Inc. The Committee is a private civil rights law firm supported by 45 of the major Chicago law firms. Since the national Lawyers' Committee founding in 1963 at the request of President John F Kennedy, the Lawyers' Committees around the country have been representing minorities and women in suits alleging discrimination in housing, employment, education and the administration of justice.

In the past four years, the Chicago Committee has been representing an increasing number of disabled persons in discrimination suits in both federal and state courts. Our experience tells us that it is vital to eradicate the effects of the Supreme Court's 1984 decision Grove City College v. Bell and once again offer a realistic avenue of redress for minorities, women, and disabled persons in discrimination suits. Limiting the coverage of these statutes to those areas where it can be proved that federal funds are used -- rather than recognizing that by receiving funds in any area an institution benefits as a whole -- would allow institutions to pick and choose what specific programs they will make available to qualified citizens. Thus, the CLC endorses H R 700 and the efforts of its supporters to amend Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title VI of the Civil Rights Act of 1964.

It is clear that our federal government should not be funding institutions which discriminate on any invidious basis. It is equally clear that the federal government does not have the resources or inclination to uncover every instance of such discrimination and to use its funding as an incentive to eradicate such discrimination. The policy decision to pinpoint the termination of federal funds which support noncompliance recognizes the reality of limited federal enforcement. This leaves the major enforcement of the obvious, albeit sometimes ignored, idea of refusing to support discrimination with federal funds in the hands of those persons who have been discriminated against.

This concept of "private attorneys general" is a time-honored one. Practice has shown it to be a very effective enforcement mechanism for a variety of federal civil rights statutes. We are grateful to see that concept reinforced by H R 700.

As we perceive the intent of H R 700, the remedies available to private persons will be unrestricted by the amount or use of federal funds. Rather, the enforcement club available to the private persons will be the full range of relief which has been traditionally awarded by courts in such actions. In order to make these laudatory intentions clear, we hope the legislative history will reflect the conscious policy choice that the private litigant is to be the primary enforcer of the rights guaranteed by these laws.

We at the Lawyers' Committee have seen that the effect of suits by private litigants extends far beyond their individual cases. For example, an individual claming she was denied entry into a graduate program at a small private college because she was disabled not only was offered damages and reinstatement, but also was directly responsible for the college adopting a new explicit policy of non discrimination for all entering students. Faculty members were also sensitized, many of whom may have honestly believed their paternalistic attitude was in the student's best interest. This affirmative relief offers far more real help to groups facing discrimination than the withdrawal of federal funds.

Mr. HAYES. Miss Matthews.

Ms. MATTHEWS. My name is Cris Matthews and I am the Disability Rights Coordinator for Access Living of metropolitan Chicago, an independent living center for people with disabilities.

My disability was discovered at an early age, but my parents hadn't tested for school. It was discovered that I should be in an accelerated education environment in order to develop the proverbial potential that we all have. Well, they tried very hard to find a school that would accept me, but at that time there was no Federal laws to allow me to enter a school with students who I was equal to. I was automatically rendered retarded because of my wheelchair.

I went to what we call a special school. Although my friends in the neighborhood could walk to the nearby public and parochial schools, I was dragged on and off a school bus for an hour's ride to and from school each day. The classes weren't very good. We just were not perceived as having much of a future so we just got pretty much enough to meet the legal requirements.

When the time came for high school, we had "Mission Impossible" all over again. We tried very hard to find a high school that would accept me, but again, without regulations, the local high school, which was five blocks away, didn't feel they needed to accommodate my disability. There were no ramps and there was no elevator in a three-story public school building, so again, I had to go to the only public special school in the City of Chicago.

Somewhere along the line, though, a very wonderful Spanish teacher, who was of Mexican heritage and I think understood what denial of rights meant, discovered that I had a bent for languages. He became a tutor and a guidance counselor. We checked a lot of colleges and careers that I could have with this ability. My goal at that time had been to be a translator at the United Nations.

Eventually I had to go to a State-run, liveaway school, which meant that somewhere along the line I had to advise my mother that being with my own kind, in a small school, where I would be guaranteed to get specialized education, would be best for everybody concerned. It was horrifying to find out that my peers, people that were my age, had not even completed elementary school when I got there. Most of the people wouldn't be able to graduate before they reached age 21 because they had to leave, whether or not their education was completed. Few of the people could read above the fifth grade level at that point. Although they were fully blossoming adolescents, none had been allowed to progress socially or academically at the rate of other teenagers who didn't have disabilities of the same intelligence. There was to be no life after high school, and the guidance counselor told all of us that we should not expect to make anything of ourselves. At that time there was still no 504 to reverse that verdict.

It never occurred to me not to go to college. Between that Spanish teacher and my family, there had just never been any other direction for me to take. During my formative years, there had been a television campaign urging attendance at the college of the viewer's choice. That sounded reasonable to me because I had heard somewhere we were all guaranteed a right to an education. But I don't think the college of my choice was aware of that because they rejected my application because they had, in their words, no handicapped programs. I didn't understand that because what I applied for was a multiple language program, not a handicapped program.

I was humiliated by this arbitrary rejection, so I started applying all over the country. I applied to good schools, not-so-hot schools, private schools and public schools, liberal and conservative. I received two acceptance letters, one from the University of California at Berkeley, and Southern Illinois University at Carbondale. There was very limited financial assistance for us to go out of State, so I chose Southern Illinois.

I was 17 years old and that was the first time in my life I was able to experience a coeducational experience without just people in wheelchairs. It was a completely new experience for me. I had access to things, to all the things that students have that make colleges what they are. As 504 became more the law of the land, there were opportunities available to me and the growing disabled student population. I got a campus job. I was elected to the student senate and became involved in lots of student affairs. It was nice to be acknowledged as a campus leader in both disabled and nondisabled circles. It was a surprise.

The protections of 504 made me an equal; it gave me hope and a future of promise. I had to change my major four times before I found one relatively accessible. My goal of translating had to be sacrificed for accessibility. Thanks to 504, the word compromise is antiquated now.

With such wonderful facilities available where I went to school, I naturally assumed that everything was fine. I could go where I wanted to go to school and pursue whatever career I wanted to pursue. I had a rude awakening when it became obvious that the road ahead of me was not barrier free.

I decided to return to Chicago to pursue more spiritual academic endeavors. Some Christian friends had highly recommended one school in my area, and I was excited to find that Billy Graham would be appearing there. I made an appointment with the admissions counselor for the same day. When I called Wheaton College about wheelchair tickets for the Crusade, I was informed that there was no way for me to enter the auditorium in a wheelchair. In fact, the informant said there was no way to get into any of the buildings on campus.

I was devastated. All I wanted to do was study and fellowship with people who believed as I did. I could not understand how a Christian school could deny another believer access to such an integral part of the Christian experience, particularly based on something as inconsequential as a disability.

At Access Living, we have been able to assist our clients in making better lives for themselves because of the protections of 504. You will see in some of our brochures what we do. Almost all of the colleges and universities I applied to are now accessible. This would not have been accomplished without 504. Today we are accomplishing goals in areas traditionally closed to people with disabilities.

Achieving human rights is no easy task. We have witnessed the denial of civil liberties of allegedly inferior groups throughout history. Our country began because of persecutions, and has been glorified as a haven for oppressed peoples everywhere. We, ourselves, have been guilty of oppression, but have managed to at least correct the most horrible affronts to human dignity. As a nation, we are angry about what occurs in Soviet Bloc countries and in South Africa. We are quick to defend democracy in Nicaraqua and Grenada. Yet, without much ado, the Supreme Court can eliminate from most of the population the very rights we pride ourselves in preserving worldwide. I fail to see the democracy in that.

The Civil Rights Restoration Act of 1985 must be passed. Millions of productive individuals will be sentenced to lives of dependency and degradation, forced to live in a manner not one of you would choose or tolerate. The Civil Rights Restoration Act of 1985 must be passed if we profess to be true champions of the human spirit. The Civil Rights Restoration Act, most importantly, must be passed if we are to continue to proclaim ourselves as one nation, under God, with liberty and justice for all.

Thank you for your time, gentlemen.

[Applause.]

[The prepared statement of Cris Matthews follows:]

PREPARED STATEMENT OF CRIS MATTHEWS, DISABILITY RIGHTS COORDINATOR, ACCESS LIVING, CHICAGO, IL

My name is Cris Matthews. I am the Disability Rights Coordinator for Access Living of Metropolitan Chicago, an independent living center for people with disabilities.

Although my disability was discovered at an early age, my parents soon realized that their daughter was developing quite rapidly intellectually. Pre-School testing indicated that an accelerated academic environment would allow me to fully develop my potential. With the sparkle eyed anticipation of young parents they set out to locate the best possible school for me. All they got for their effort was rejection. Every school, public and private, refused to enroll me. There were no 504 regulations to rely on, so these administrators did what they liked. It made no difference that I was an intellectual equal to the rest of the student body. It was the wheelchair that automaticaly rendered me retarded in their eyes.

I had to go to what is known as a special school. My neighborhood friends walked to nearby public and parochial schools. I was dragged on and off a bus for an hour's ride each way, to spend my days with people who lived too far apart to maintain after school contact with. Classes were basic, and uninspiring. Disabled people don't need a lot of preparation to live in institutions.

When the time came for high school, Mission Impossible began again. The local high school was five blocks. The principal decided, without seeing me that I had too many special needs to be a serious student. There was no apparent way for me to enter the building, and the school had three floors of classrooms with no elevator. She didn't care that my language, science and reading scores placed me in the top 1% of the nation. There was no 504 to require reasonable accommodation. Like an illegitimate child of a wealthy family, I was parceled out to the poor cousin -- the only special high school in Chicago. As before, the instruction received was enough to meet legal requirements. Excellence, even competence, was neither expected nor encouraged. A long bus ride, separation from my local friends were all a part of the process. At the local high school, my friends were taking college preparatory classes. I was in training for nothing. No one considered that people with disabilities could lead useful lives.

During that first year my Spanish teacher, who had been denied many things due to his Mexican parentage, discovered that I had a bent for languages. He became an informal guidance counselor, tutor and salesman of my abilities. Together we explored careers and colleges, my dream was to work as a translator for the United Nations.

A change in my family situation forced my frustrated, bewildered mother to place me in a state run live away school. She had been advised living with "my own kind" was the best thing for me. The classes were small, she was told, and each resident received individualized learning. A splendid education was guaranteed for all.

Upon my arrival, I was horrified to find how stunted my peers were. There were four other people in my sopamore homeroom class. Three of them were a year older than me, the other was 20 years old. She would be unable to receive a diploma because she would reach age 21, the discharge age, before her limited education was completed. Most of the rest of the students were in the elementary school program. Few of them could read above a 5th grade level. None of them, although fully blossoming adolescents, had been allowed to progress socially or intellectually, at the rate of other teenagers. There was to be no life after high school; the guidance counselor told us all that we could not expect to make anything of ourselves. There was no 504 to reverse that verdict.

It never occured to me not to go to college. Between that wonderful Spanish teacher I missed so much and my family, there was no other direction to take. During my formative years, there had been a television campaign urging attendance at the college of the viewer's choice. That sounded reasonable to me, especially since I'd heard somewhere that every American had the right to an education. Apparently, the college of my choice wasn't aware of that. They rejected my application because they had no "handicapped programs". I thought that was odd, because I had indicated that I needed a multiple language program, not a handicapped program.

With the humiliation of one arbitrary rejection under my belt, I applied to schools across the country. My brains had to count for something, sooner or later. Liberal schools, conservative schools, outstanding schools and not so outstanding schools all responded negatively. Two schools sent me an acceptance letter - the University of California at Berkeley, and South Illinois University at Carbondale. Since financial aid for people with disabilities was scarce, I chose SIU.

For the first time in my life, I shared an education experience with non-disabled people. I got to and from classes on my own, instead of being stuffed on a school bus. I was on equal footing with everyone else--no longer underestimated. And, at long last, I had access to all the things that make college years so sweet. As 504 was implemented, more opportunities became available to me and the growing disabled student population. I obtained a campus job, got elected to Student Senate and became involved in many aspects of student affairs. Much to my amazement and delight, I was an acknowledged campus leader in both disabled and non-disabled circles. Any building I could get in to gave me choices -- a concept I had never known.

The protections of 504 made me an equal, gave me hope and a future of promise. I started college as 504 was taking hold. I had to change my major four times before I found one relatively accessible. My goal of translating had to be sacrificed for accessibility. Thanks to 504, the word "compromise" is antiquated.

With such wonderful facilities available, I naturally assumed that people with disabilities had finally achieved some status in society. What a rude awakening I had when it became obvious that the road ahead was not barrier-free.

I decided to return to Chicago to pursue more spiritual academic endeavors - Christian friends highly recommended one school in my area, and I was excited to find that Billy Graham would be appearing there. I made an appointment with an admissions counselor for the same day. When I called Wheaton College about wheelchair tickets for the Crusade, I was informed that there was no way for me to enter the auditiorium with a wheelchair. In fact, the informant said, there was no way to get in to any of the buildings on campus. I called the admissions counselor who confirmed that statement. I was devastated. All I wanted to do was study and fellowship with people who believed as I did. I ould not understand how a Christian school could deny another believer access to such an integral part of the Christian experience, particularly when based on something as inconsequential as a disability.

At Access Living, we have been able to assist our clients in making better lives for themselves because of the protections found in the Rehabilitation Act of 1973. Almost all of the colleges and universities I applied to are now accessible. This would not have been accomplished without 504. We used to have no future, no function, no simple humanity. Today, we are accomplishing goals in areas traditionally closed to people with disabilities.

Achieving human rights is no easy task. We have witnessed the denial of the civil liberties of allegedly inferior groups throughout history. Our country began because of persecutions, and has been glorified as a haven for oppressed peoples everywhere. We, ourselves, have been guilty of oppression, but have managed to correct at least the most horrible affronts to human dignity. As a nation, we are angry about what occurs in Soviet bloc countries and South Africa. We are quick to defend democracy in Grenada and Nicaraqua. Yet, without much ado, The Supreme Court eliminates from most of the population the very rights we pride ourselves in preserving worldwide. I fail to see the democracy here.

The Civil Rights Restoration Act of 1985 must be passed. Millions of productive individuals will be sentenced to lives of dependency and degradation, forced to live in a manner not one of you would tolerate. The Civil Rights Restoration Act of 1985 must be passed if we profess to be true champions of the human spirit. The The Civil Rights Restoration Act of 1985 must be passed if we are to continue to proclaim ourselves as one nation under God, with liberty and justice for all.

independent life

WINTER 1984
ACCESS LIVING of METROPOLITAN CHICAGO
505 N. LaSalle St., Chicago, IL 60610 649-7404/TTY# 649-8593

Musa Gets a New "Lease" on Life

Musa, 22, sustained a spinal cord injury two years ago in a car accident, leaving him quadriplegic. He came to Access Living last January because he wanted to get out of the nursing home and have his own apartment. "Who would really want to stay in a nursing home?" he said. "I wanted to be more independent."

Michelle Rosen-Friedman, AL's case manager, said Musa was hesitant at first about how he was going to make it on his own but he knew he wanted to try.

Musa attended the Level I series of seminars with topics like money management, personal care assistant (PCA) management, housing options, civil rights, and leisure time management. Staff counseled him on independent living skills, housing issues, and on PCA management.

"I had no idea how to use a PCA," he said. "I had never been in that situation before."

He credits Evelyn Harris, PCA coordinator, with helping him figure out what tasks he might need a PCA to perform and for giving him some referrals of possible PCAs.

Musa found a PCA on his own, who works a couple of hours in the morning and evening each day. Expenses for his PCA are paid by the Department of Rehabilitation Services.

Everyone at Access Living was friendly and caring, Musa said. "They made me feel at home. Everybody was very supportive and open. I got to meet a lot of people through the classes and learned about the outside.

"Access Living opened the door and made it a little easier to be independent. I got out of the nursing home faster than I expected."

He complimented staff members, saying, "They care about the people who come in. They're not just putting in their eight hours."

In April, Musa was referred to an accessible, subsidized apartment in Chicago. He moved in fully in June. Musa received a loan for the first and last month's rent through the Hendley Rent Fund, which he is slowly repaying.

The Hendley Rent Fund was established by Mr. and Mrs. Paul Hendley to help clients who cannot afford the security deposit. As clients repay their loans, this money becomes available for other clients who need this help in order to make the move to independence.

Musa says he enjoys his new apartment. "It's mine—my apartment. I'm the boss, in control of my life. No one tells you when to come in or to go out."

He is currently taking classes at Truman College and receives therapy at the Rehabilitation Institute. He is looking forward to the future.

"I haven't lost hope that I will be on my feet again, but I am looking forward to a new career. I don't know what that career will be yet."

Access Living's Day at the Races

Phil Georgeff, a 25-year veteran race announcer at Arlington Park Race Track, shared insights and anecdotes with more than 100 friends and supporters of Access Living at its third annual day at the races, September 22. Over $7,000 was raised for Access Living.

Scott McMannis, "the professor," explained his formula for handicapping. Many followed his advice in wagering on the third race, named in honor of AL. Island Empress and her jockey, Earlie Fires, won that race.

And some took a chance on AL's raffle and won fabulous prizes like round-trip air fare to Las Vegas, a weekend for two at the Hyatt Regency Chicago, a television, an area rug, a telephone answering system, and dinner for two at some of the finest

Continued on page 7

In the winners circle at the Arlington Park Race Track are: standing, benefit co-chairperson Brad Shorser, winning jockey Earlie Fires, and co-chairperson, Mary Therese Murray. Seated are John D. Kemp, Access Living board chairman, and Dr. Sherry Tucker, board member.

DORS To Develop New Independent Living Services for Disabled

The Illinois Department of Rehabilitation Services (DORS) has initiated a campaign to develop and expand independent living services and resources for individuals with disabilities. Acting Director Sue Suter says DORS plans to fund two centers for independent living in January 1985.

Access Living has long advocated for the establishment of more independent living centers in Illinois and participated in the development of DORS' *"Plan for the Development of Independent Living Programming,"* which was recently released.

This plan called for the establishment of an Independent Living Task Force to participate in the development of independent living policy, to provide technical assistance to groups interested in starting independent living centers, and to review proposals for start-up funds of new independent living centers. Tim Snyder, director of programs, and Barbara Black, an AL board member, serve on the task force.

As part of DORS' commitment to ensuring that consumers have a significant role in planning and maintaining programming for independent living, consumer control of the new independent living centers is a requirement for funding and more than half of the members on the task force are disabled.

Access Living applauds DORS' initiative of expanding independent living services for disabled persons in Illinois. "We acknowledge this initiative in increasing the number of independent living centers. Not only will these centers provide needed independent living services, they will enhance the growth of the independent living and disability rights movement in Illinois. It will enhance the ability of disabled persons to advocate through a statewide network," says Marca Bristo.

Social Security Disability Reform

The federal government will now have to show that there is dramatic medical improvement in a person's condition before they can remove them from social security disability rolls, according to legislation passed unanimously by Congress. President Reagan is expected to sign the legislation.

Thus ends a long, bitter struggle by disability groups and their allies in Congress for reforms of the social security disability review process. This process was criticized for dropping 490,000 individuals from the disability rolls since 1981, often based upon flimsy and incomplete evidence. Of those who appealed, however, about 200,000 have been reinstated to the program.

Earlier this year, more than half of the states, which are supposed to administer the program for the federal government, had stopped conducting reviews either because of court injunctions or action by state legislatures. The administration lost a number of class action suits brought on behalf of disabled persons.

The administration, which had initially opposed the reform legislation, changed its mind when HR 3755 passed in March by a vote of 410 to 1. Two weeks later, a nationwide moratorium on the disability review program was announced, pending enactment of legislation.

The Senate version passed 99-0 in May. In September, House and Senate conferees reached an informal agreement which was ratified four days later by both the Senate and the House. Below are listed some of the bill's provisions:

Medical Improvement: Benefits may only be terminated if there is substantial evidence that an individual's medical condition has improved since first being placed on the rolls and that the individual is able to work or if the original decision was made in error or fraudulently obtained.

Benefit During Appeals: Individuals who appeal their case can continue to collect benefits until they have taken their appeal to the administrative law judge. If the individual loses the case, the benefits must be repaid. This provision is effective through 1987 for Social Security disability recipients and permanent for those disabled persons receiving Supplemental Security Income.

Mental Impairments: New standards for evaluating mental disabilities must be published within 120 days after enactment, after which time the moratorium on reviews of persons with mental disabilities will end.

Multiple Impairments: The combined effects of an individual's multiple impairments must now be weighed in determining disability, even if each of the impairments alone is insufficient for such a determination. The Department of Health and Human Services must also complete a study by December 31, 1985, on the role of pain in determining disability.

Advisory Council: A 10-member panel of medical and vocational experts must be appointed by June 1, 1985 to advise the health and human services secretary on disability policies, standards, and procedures.

The reforms of the social security disability review process are good news for disabled persons, many of whom rely upon it for their major source of income.

CTA Makes a Decision on Public Transportation

The Chicago Transit Authority (CTA) board has finally made its decision on transportation for persons with disabilities.

According to a resolution unanimously approved by the board, CTA must develop a plan to increase special service rides by 100% without spending more money than is currently budgeted for transportation of the disabled. The plan must be developed by January 1, 1985 and implemented by August 1985.

This means that the current level of 200 trips each day will be increased to 400 a day—still leaving thousands of people without rides. Without additional money, new special services buses cannot be purchased nor lifts put on new mainline buses. Private contracting seems to be the only option. A reliable source at CTA verifies this and has indicated that there is no order for new special services or mainline buses.

"Access Living finds CTA's answer to disabled people's need for accessible public transportation inadequate," says Cris Matthews, disability rights coordinator. "Chicago needs a multimodal transportation system for disabled persons, increasing special service rides while at the same time making mainline transportation accessible."

Access Living, Council for Disability Rights, Coordinating Council for Handicapped Children, Advocates for the Handicapped, Congress of Organizations of the Physically Handicapped, Gray Panthers, and the Paralyzed Veterans of America have joined with American Disabled for Accessible Public Transit (ADAPT) to urge CTA to expand special service to 24-hour seven-day service with no refusals and to buy lift-equipped mainline buses as the fleet is replaced.

The coalition recently expressed its concern in a march by 40 to 50 disabled and non-disabled people to Merchandise Mart to deliver the following message to the CTA board:

"As citizens (of Chicago), we cannot accept any less than equal access to transportation. The CTA board has chosen to add only 200 rides daily to the present special services. That still leaves thousands of Chicagoans isolated from the world because they have no transportation. We will not go away until the board acknowledges our right to move freely about the city, utilizing both special service and mainline transportation."

Mike Ervin of ADAPT says the group plans to keep the pressure on the CTA board for equal access to transportation as long as need be. For more information on ADAPT, call Mike at 281-5599 or Cris Matthews at Access Living, 649-7404.

Governor Thompson Signs Two Bills Affecting the Disabled and Announced Sue Suter as new DORS Director

Governor Thompson came to Access Living in September to sign two bills affecting the disabled, HB 2441 and 2751. He also announced the appointment of Susan Suter as acting director of the Department of Rehabilitation Services (DORS).

HB 2441 exempts disabled persons from parking meter fees for meters that have a 30-minutes or longer limit. It establishes a statewide, standard fine of $50 for persons illegally parking in handicapped parking spaces. HB 2751 allows a 50% reduction in vehicle registration fees for disabled and elderly persons.

In announcing her appointment, Governor Thompson said, "Sue Suter brings a vitality, a blend of administrative experience and awareness of consumer issues to this job. Her background makes her uniquely qualified to guide the Department in its mission of providing services."

Sue served as associate director of DORS before her promotion and before that was the Governor's Coordinator for the International Year of Disabled Persons. She said recently, "I am absolutely delighted to be DORS' director. I am really excited about the opportunity our agency has to become a leader in service provision and in systemic advocacy on behalf of disabled people in Illinois. It has always been my philosophy that we as individuals can make a difference.

"I have made a commitment to the Governor, to consumers, and to DORS staff that we will work together to make that difference."

Access Living is looking forward to working with the new DORS director on meeting that challenge.

Acting DORS director Susan Suter (left) watches as Governor James Thompson signs a bill affecting disabled persons in Illinois.

Civil Rights Act Shelved in Senate

Congress adjourned in October without passing the Civil Rights Act of 1984. A last-ditch effort to attach the bill to an emergency spending bill in the Senate failed, scuttling plans for passage this year. The civil rights legislation, which passed 375-32 in the House, would have reversed the Grove City College *vs.* Bell Supreme Court decision last February that narrowed the prohibition against sex discrimination in federally assisted education programs.

The Supreme Court ruled that Title IX of the 1972 Education Act only applies to programs which directly receive federal money, in this case, the financial assistance office. The decision has been interpreted to apply also to instances of discrimination on the basis of race, religion, national origin, age, or disability.

"Shame on the Senate," said Senator Edward M. Kennedy (D-MA) for failing to pass the civil rights bill. He also criticized President Reagan, saying, "If Ronald Reagan were to wink, this bill would fly through the Senate."

Disability rights advocates say the Civil Rights Act is not a dead issue. It will be the first bill on the docket of the House when it reconvenes. We are not so sure about the Senate; negotiations are still going on. We will keep you posted.

Allied Health and Social Service Students Make Good PCAs

Joan Bourgeois, a student of occupational therapy, attended Access Living's personal care assistant (PCA) training last summer and is currently working as a PCA. She says she found the whole experience valuable. "The training was helpful. I learned about issues between the handicapped and non-handicapped and that the handicapped can be independent."

Working as a PCA has been good training for her future career says Joan, because it has given her experience in communicating with disabled persons. "I am learning about myself through [being a PCA]."

"Allied health and social service students make good PCAs because they have flexible schedules and they are receptive to independent living concepts and the nature of the work involved," says Evelyn Harris, AL's PCA coordinator. "An expressed interest in one of the helping professions is an important indicator of the ability to commit oneself to working as a PCA. These students generally show a great desire to learn, genuine enthusiasm, and a proven dependability that is demonstrated in their commitment to school and work."

Last summer, 17 allied health and social service students took AL's five-week PCA training, given in conjunction with the City Colleges of Chicago. The PCA training includes information about different disability types, adaptive equipment, body mechanics and transfer techniques, and the independent living philosophy. Participants are also sensitized to attitudes toward disability and their role as an employee.

For the group of allied health students, Evelyn revised training materials, providing much more resource material. A nurse, a physical therapist, and an occupational therapist discussed medical considerations with the class. And exercises exploring personal comfort levels with touch and examining attitudes about disability were conducted. This more in-depth training was provided not only to make them better PCAs, but to make these students more informed clinicians later. They will be able to share this information about the independent living philosophy and the option of PCA services with their patients and families.

After completing the course, the students were added to AL's active PCA pool for referral to clients in need of this service. Many are currently working as PCAs. Evelyn says she has received many complimentary comments from PCA employers about the quality of this group.

While students in the helping professions have been identified as a good source of PCAs, this is not the only type of person recruited for the PCA program. Evelyn says she looks for people who want to do personal care and homemaking tasks for a disabled person, are willing to work for minimum wage, are receptive to independent living concepts, and have a good attitude. "Leave the missionary attitude outside when you work as a PCA."

In other words, a PCA should view himself or herself as an employee, taking directions from the disabled employer. They are not there to "save" the poor, helpless disabled person, but to perform a service.

In addition to recruiting, training, and maintaining an active PCA referral pool, another important part of the PCA program is preparing clients to become PCA employers. Evelyn conducts a four-part series on PCA management in the Level I educational series held quarterly, giving information on interviewing, scheduling, delineating tasks to be performed, DORS funding procedures, and the responsibilities of being an employer. She also individually counsels clients and family members on PCA management issues.

Another PCA training is scheduled in January. If you are interested in receiving more information about AL's PCA program—about PCA recruitment, training, or management—call Evelyn Harris at 649-7404.

Edward Roberts Awarded a MacArthur Fellowship

Edward V. Roberts, 46, one of the founders of the independent living movement, has been awarded the prestigious MacArthur Fellowship recently in recognition of his accomplishments in promoting human rights.

He will receive $224,000 over the next five years, giving him the freedom to devote himself more fully to his own creative endeavors. During this period, he will continue as director of the World Institute on Disability, a public policy institute seeking solutions to major problems faced by people with disabilities.

Ed is acknowledged by many as the "grandfather" of the independent living movement. In the mid-60's, Ed and several other severely disabled students initiated what was later to be known as the independent living movement when they were students at the University of California-Berkeley. The university had arranged housing for them at an infirmary staffed with nurses. This was too much like a hospital, so they found off-campus housing and hired their own personal care assistants.

They soon became activists for disability rights and formed the first Center for Independent Living in Berkeley in 1970. Ed was one of CIL's founders and served as executive director from 1973-75.

In 1975, Ed went on to become director of California's Department of Rehabilitation, serving for seven years. He played an integral part in the national independent living movement and provided leadership and inspiration for many independent living centers across the country.

The independent living movement has come a long way since the 60's. Today there are more than 159 independent living centers funded by the Rehabilitation Services Administration and countless other independent living programs throughout the country.

"Access Living is delighted for Ed. This prestigious award is well-deserved and highlights the recognition disabled advocates and the independent living movement is gaining nationwide," says Marca Bristo, executive director.

Violinist Itzhak Perlman gives Recital to Help Disabled

Itzhak Perlman, violin virtuoso, gave a recital at the Kennedy Center Concert Hall in Washington, DC, in October to benefit the nation's 36 million disabled people. The benefit was sponsored by the Disability Rights Education and Defense Fund (DREDF) and the funds raised will be used to establish a national foundation that will provide seed money to organizations operated for and by the disabled.

This event is another example of disabled people taking a leadership role in an area traditionally dominated by non-disabled persons. It heralds the growing recognition of the disability rights movement nationwide.

Marca Bristo, from Access Living, Edward Stein and Dr. Henry Betts from the Rehabilitation Institute attended the benefit and later joined a gala reception hosted by Vice President and Mrs. Bush. Senators Robert Dole (R-KS) and Lowell Weicker (R-CT) and Representatives Tony Coelho (D-CA) and Claude Pepper (D-FL) were co-chairpersons of the event.

The foundation established with proceeds from the benefit will be run by DREDF. DREDF, a non-profit education and advocacy organization, has been very helpful to Access Living in providing technical assistance and up-to-date information on the civil rights of disabled people.

The benefit was the kick-off of a DREDF-sponsored national public awareness campaign, designed to dispell negative attitudes about disabled persons.

"This awareness project will throw a national spotlight on the need for disabled people to be given the individual opportunity to be valued and respected members of our society," says Itzhak Perlman, who contracted polio at the age of four.

He will narrate a television documentary on the Public Broadcasting Service about how disabled people are taking control of their lives to make mainstream integration a reality. The program will be produced by WQED/Pittsburgh and will be aired during the 1985 season.

Itzhak Perlman, violin virtuoso, gives benefit recital on behalf of the nation's 36 million disabled people.

AL Board and Staff on the Move

Marca Bristo, executive director, has been appointed to the Advisory Council on Disability of the new Department on Aging and Disability. She previously served on the Advisory Council for the former Office of Senior Citizens and Handicapped. Joining Marca from AL's staff is Ken Williams, housing coordinator.

Marca recently spoke about employment of the disabled at a meeting of the Chicago Business and Professional Women's Club and about sexuality to medical students at the University of Illinois.

John D. Kemp, chairman of AL's board, was the keynote speaker at the fifth annual awards luncheon for the Center for Rehabilitation and Training of the Disabled.

Evelyn Harris, PCA coordinator, told occupational therapists at the Rehabilitation Institute about AL services and the independent living philosophy.

Cris Matthews, disability rights coordinator, spoke about underemployment of the disabled to Equal Opportunity Commission counselors in the U.S. Department of Health and Human Services. She talked about disability rights and attitude awareness with attorneys volunteering for the Legal Clinic for the Disabled and about the importance of making city programs accessible to disabled persons with city department managers at a conference cosponsored by the Chicago Department on Aging and Disability and the U.S. Office of Civil Rights.

Michelle Rosen-Friedman, case manager, explained AL's services to allied health and rehabilitation professionals at Children's Memorial Hospital.

Ken Williams, housing coordinator, was a panelist for a seminar on tenant vs. landlord rights at the City House exposition. And he told a group of severely disabled students at Maine East High School about AL services, especially in the area of housing.

Access Living's Independent Living Seminars

Access Living's education program offers two levels of seminars—the Level I basic independent living skills seminars and the more advanced Level II self-enhancement seminars. Level I seminars include an orientation to independent living and AL's services, personal care assistant management, housing, civil rights, and leisure time management. Clients must be referred to Level I seminars by their counselor.

Level II seminars are open to all clients and schedules are sent out on a regular basis. If you would like information on upcoming seminars or have a suggestion for a possible topic, call Bob Neumann, our new education coordinator, at 649-7404.

Welcome to New AL Staff!

Joe Zuniga, our new receptionist, is a former staff associate in the case management department of Access Living.

Kate Kenny, our new secretary, formerly worked in the purchasing department of Cook County Hospital and for eight years in a skilled care facility.

Bob Neumann, PhD, is our new education coordinator. He received his PhD in counseling psychology from Northwestern University and has worked as a psychologist on the rehabilitation units of Memorial Medical Center in Springfield and Methodist Hospital in Gary, Indiana.

Thanks To All Our Recent Volunteers

We want to express our thanks to all those who have volunteered at Access Living recently. We appreciate all your help.

Lois Anderson
Anita Batty
Betty Bond
Maribel Cintron
Michael Grice
Jacqueline Guilfoyle
Lois Guilfoyle
Michael Guilfoyle
Richard LaBrec
Ruby Mendenhall
Barbara Rosenberg
Ron Seiwert
Dorothy Tolbert

Need Information?

Do you need information about Access Living's services? about benefits and rights of the disabled? about accessible hotels, theaters, or restaurants? about other resources for the disabled in the community?

Then call AL's Information and Referral Department at 649-7404. If we cannot answer your question directly, we can refer you to someone who can.

Day at the Races. . .

Continued from Page 1

restaurants in Chicago.

Many thanks to the co-chairpersons of the event, Brad Shorser, board member, and Mary Therese Murray, and to the many volunteers who made this event possible, including Joe Chovan, Oscar Izquierdo, Laura Bowman, Sean Kennan, Barbara Black, Carolyn Miller, Christopher Ogden, Delia Roa, and the professional affiliates of the Women's Board of the Rehabilitiation Institute.

We also want to thank the companies that donated services and prizes for our raffle: Graphic Design & Printing, Inc., Diemand Printing Co., Keller Graphics, Carefree Vacations, Hyatt Regency Chicago, World Book Encyclopedia, House of Glunz, The Carpet Place, Abbey Medical Supplies, Gordon's, Hillary's, O'Hara's Antiques, Telephone Electronics Center, Arlington Park Race Track, Dos Hermanos Cantina, Lino's, D.B. Kaplan's, and Morrie Mages.

Thanks to all who helped make this benefit a success!

In Memory of August Christmann

August W. Christmann, 57, a respected pioneer in the disability rights movement in Illinois, died November 9, 1984 of pneumonia. Auggie, who had contracted polio at 14, was a highly regarded advocate for the disabled for many years. His leadership and commitment to disability rights will be remembered.

He was the executive director of the Congress of Organizations of the Physically Handicapped for over 10 years. A graduate of Loyola University, he had worked as an insurance broker for 25 years.

Auggie was extremely active in civic affairs, serving on the City of Chicago Community Development Board, the Governor's Planning Council on Developmental Disabilities, the Advisory Council of Chicago's Department on Aging and Disability, and the State of Illinois Library for the Blind and Physically Handicapped. He was a member of the Holy Name Society and the Helmsmen.

He is survived by his two sisters, Katherine Christmann and Margaret Bird.

Auggie will be deeply missed by us all at Access Living.

Mr. **Hayes**. Thank you.

Could I just suggest to the audience under the rules of the committee we don't have any emotional outbursts or applause of witnesses' testimony. It sort of distracts.

Mr. Keen.

Mr. **Keen**. Mr. Chairman and members of the committee, I appreciate the opportunity to be here this morning and to testify before you. I am an attorney in private practice in Normal, IL. As part of my practice, I represent the Illinois Association of Christian Schools and the Illinois Christian Action Network, a network of schools and churches in the State of Illinois.

All of the clients I have and represent very strictly agree 100 percent, on its face, with those who have physicial and mental handicaps, those who are black, and who are of any other minority in America. For those who are handicapped, we are as heartbroken as they are, that they are not given the equal access and that they don't have the opportunity in every single situation that those who are not handicapped have. We wish that it could be that simple, to simply wave our Federal magic wand and have all these limitations suddenly removed.

For those who are of minority era, we wish that certainly they would have free opportunity in all our schools and churches, and the organizations which I represent certainly provide them with the best of opportunity in a color-blind fashion, without regard to race or creed, other than a religious viewpoint. We will be the first to defend civil rights when those civil rights are violated based on strictly race or handicap or age under the coverage of this bill.

However, we are extremely concerned with the coverage of this bill and with many points of it. I am not going to read to you. I am simply going to outline the highlights of it. If you're interested, you can read my testimony and get the details.

Primarily our interests are limited to three points. No. 1, the bill claims to restore civil rights which have been taken away by the *Grove City* decision. Certainly the bill puts back into place what some thought was in place prior to the *Grove City* decision, but it does far more than that. It is much more than a restoration act or bill. It is an attempt to broadly expand the coverage of the bill to institutions which have never had Federal funds. All of the clients that I have in this area have strictly refused any kind of Federal funding, have run their schools, churches, and other organizations without any kind of Federal or State support whatever. Many times it has been offered to them and they have always refused it, based on the principle that they feel they are not to be State supported, they are not a State institution, and they would like to retain their freedom and don't want anybody else's money to do the work they are doing.

This bill is extremely vague as to the triggering mechanism of who is a recipient of Federal financial assistance. In the current regulations, under title IX, anyone who benefits indirectly from someone who is a current recipient becomes a recipient. That leaves us with many questions. As we are attempting to decide what the statement of this bill should be, we would like to know what does tax-exempt status mean? Does that mean Federal financial assistance? If so, aren't we really contradicting ourselves in our statement of separation of church and state? If tax-exempt status is Federal financial assistance, shouldn't we be declining tax-exemption status to any religious organization?

What is FDIC and FSLIC protection on a bank account? Isn't that tantamount to the Federal guarantee on a student loan? In my personal bank account, my church's bank account, a Christian school or private school's bank account, when they have a guarantee that if that bank fails they will be paid back all in that account up to $100,000, isn't that the same thing as giving that benefit to that school or person who owns that account? Isn't that Federal aid, and does that Federal aid or assistance then trigger coverage under these four particular acts which are proposed to be amended?

What about Social Security income? If I have a church as a pastor and I have people coming to my church who get Social Security income, and as a Christian they tithe that Social Security income and put 10 percent of it in the offering plate, isn't that the same thing as spending your money in a school, and isn't that Federal support to that person, and isn't that then Federal support to that school, church or institution or person?

What about Federal employment? If I have a member of my congregation as a pastor who gets Federal income because he works for the Federal or State government, isn't that person then a recipient of Federal aid in one form or another? And then, when they give that money to my church in the offering plate, doesn't that then become Federal aid to that church?

We are unable to determine how far this chain of assistance really goes. Are we going to say it goes from the initial recipient of the aid to the next person who recieves it and that's it, or do we have a secondary and further development of financial aid recipients? Everybody who ever touches that dollar, is he suddenly a Federal aid recipient? It is very unclear and we don't know where we stand.

The second point I would like to discuss—and I think probably this is the most concerning to me personally and to many of the clients that I represent—is why, in the name of morality, in the name of civil rights, in the name of stopping discrimination based on race, handicap, and age, why are we saying, through regulations, that those who receive Federal aid cannot prevent other immorality? We are trying to stop one form of immorality and fostering another. If you read the regulations from the Department of Health and Human Services covering title IX, a recipient of this Federal aid of any kind cannot deny access to a student when that student becomes pregnant out of wedlock, cannot deny access to a person who wants a job because they are cohabiting out of marriage, cannot deny access to the student because of their desire to live with someone else prior to and without the benefit of marriage?

Now, I understand there is a religious exemption, and you say that's fine. If you have a religious conviction against that, your institution or organization that is controlled by an institution or organization can thereby exempt themselves from that portion of the coverage. But what about the case where I'm not covered by a religious exemption because I am not controlled by a religious institution? What about the private person who is, of his own self, making this religious conviction stand and saying I won't be able to offer these benefits because of my conviction?

In addition to this, we have in title IX a law which ostensibly on its face is very good in its purpose. It is an attempt to deny sex discrimination. But yet all we talk about through the regulations of the bill, in addition to the denial of sex discrimination, we talk about people who are limited in their denial of persons who are in other ways immoral. How about homosexuality? How about those who commit abortion? Are we to then to say "you can be immoral in one way and have protection of this bill; we're going to cover homosexuals, we're going to cover those who commit abortion and have them protected by this bill as well?" It's only one step away, just a logical extension of the same reasoning.

Under this bill, every Catholic Church in the Archdiocese in Chicago would have to file the forms and go through all the paperwork, appoint a designated employee in the grievance procedure, file a statement of assurance, evaluate the programs, and potentially face extreme difficulty and expense in litigation. *Cannon* v. *The University of Chicago,* decided in 1979 by the Supreme Court, said there is a private cause of action for enforcement of all title IX rights. That means that my private school client in southern Illinois, with 26 students, that is struggling to make it financially, is going to have to be extremely cautious that they are not considered a financial aid receipent in any way, and is going to have to deny access to anyone who would be in any way considered a financial aid recipient, and until we have some clarification on the tax-exempt status, Social Security, Federal employment income, and other kinds of Federal aid, we don't know if we can even have those people in our church because that would then trigger this situation.

As to the exemption for religious organizations themselves, the current regulations in title IX do allow an exemption for those controlled by religious organizations. However, in the proposed regulations it was left up to the Director to decide whether that exemption should be granted based upon whether or not the tenet that the religious organization held was validly applied to that situation. So what we have is the Director of the Department of Health and Human Services saying this is a valid application of this tenet to this situation, or no, this religious belief isn't good enough to let you out on this exemption here.

What about those churches—and I do have churches and schools as clients—who tell me constantly, "We will file no Federal forms giving any form of information because we believe, as a religious conviction, we shouldn't do so." Would this exemption then cover those schools so that they would not even have to file a statement of assurance, they wouldn't have to evaluate their programs, they wouldn't have to have designated employees in grievance procedures?

While this bill has a great title, it destroys more civil rights than it preserves. There are religious civil rights at hand and at stake. There is the fear of involvement with other recipients and the ensuing problems it will bring about. Representative Sensenbrenner discussed this matter of schools and churches denying access to individuals who receive Federal aid based upon the fact that they will not get involved in this morass of Federal paperwork and bureaucracy. I can tell you as a fact, I have been told many times already, if this bill comes into being, these schools will have to deny access to anyone who would bring about this kind of coverage on their institution. They certainly would rather close their doors than to break the moral code that was required and could well be forced upon them by regulation and by legislation of this kind.

While we laud the efforts of those who would eradicate racial discrimination based on race and creed, we will be the first also to defend those who would eradicate discrimination based on sex and handicap. It is not easy for us to say to our schools, that run on a budget of $25,000 to $50,000 a year in southern Illinois, "You are going to have to put in all new doorways, all the ramps and everything else to accommodate one or two students who happen to be handicapped."

As I said, we are as sorry as the next fellow. We wish tremendously that we could do something in our individual schools to give them access. But don't we have the right to have a school that is not capable of serving handicaps and still not have to deny access to everyone else who would be a Federal aid recipient? Are we at the stage in our country where we're saying that everybody, everywhere, has to do everything for everybody, and if it isn't that way, we'll close the school, or we will attempt by litigation to force the school or organization to make this access available? Certainly we think the handicapped ought to have the right to go to school; we think they ought to have the right to have a solid quality education. But we are not ready to say that every single school in every single situation has to provide every single opportunity for every possible student.

In our view, this bill is fatally flawed and we will do our best to deny its passage and hopefully maintain freedom for the organizations that would be affected by it.

[The prepared statement of Ralph Keen follows:]

Prepared Statement of Ralph S. Keen III, Esq.

Mr. Chairman and Members of this Joint Committee, I thank you for this opportunity to testify before you during this hearing, and I hope that our frank discussions of H.R. 700, the "Civil Rights Restoration Act of 1985," will prove helpful in promoting true freedom and civil rights for all Americans.

While their are many areas of this bill that invite discussion and review, such as the declared purpose and findings of Congress, I will avoid arguing the motivations and intentions of the bill's sponsors and address my remarks to some of the even more important issues of freedom of religion and freedom of private enterprise that enacting the bill into law would curtail.

While the sponsors of H.R. 700 will readily admit that the purpose of the bill is to expand the coverage of the four civil rights acts it amends, few sponsors, other Congressmen, Judges, or legal scholars could determine with any degree of certainty how far this expansion of so called "Civil Rights" is intended to go or how far in fact the Administrative Agencies and the Courts would proceed with expansion of federal controls on private persons, schools, corporations, organizations and "other entities." As a result of this sweeping legislative effort to correct the perceived wrongs of Americans exercizing their rights to freedom of religious convictions and moral standards, another area of private control and discretion as to the proper way to educate and rear children, and the best ways to operate religious institutions, is in jeopardy of being lost in the morass of federal controls, paperwork, and bureaucracy. Why are we so careful to protect the rights of individuals to be immoral when we decry the destruction of our homes by divorce, teenage pregnancy, abortion, pornography, child molestation, and drug abuse? By the very laws we make to prevent discrimination against women, we make it illegal to steer them away from immorality by making it impossible for a school to instill proper values and uphold standards that teach our children to respect themselves and their fellow man as created in the image of God (Genesis 1: 27). The destruction of the moral fabric of our society when we state our purpose as upholding the highest principles of morality stands today as an unparalleled paradox in American legislative history.

There is little or no argument that this bill will cover institutions and private citizens who have never received one dime of federal aid in the form of grants, loans, or guarantees. Those who stand to be impacted in the most harmful way by this bill have never received nor have they ever asked or expected any federal support of any kind. Neither have they taken or expected any form of state government support. These schools and churches have stood firmly on the belief that since they wanted and expected no federal or state controls they wanted and expected no federal or state money or loans or guarantees. All they wanted and continue to want is the freedom to operate and teach their members, students, and worshippers as their religious convictions dictate.

Some argue that their is no control of religious institutions since the regulations allow for a religious exemption in the case of a conflict of religious tenets and the requirements of the law. What right thinking bureaucrat will not admit that this burden of filings and assurances and evaluations and responsibilities of employee designations and grievance committees and administrative jockeying of programs to determine the defacto impact of programs on the sexes, is not extremely burdensome? With no doubt, the requirements as listed by the current regulations accompanying Title IX would cost private education billions of dollars every year and untold interruptions in their programs. Is this progress? Even with the religious exemption which is uncertain at best, will religious educators be assured of the freedom of to operate their schools without having to prove every tenet of their faith? What happens when the "Federal Public Policy" conflicts with the tenets of the religious institution? Ask Bob Jones University. In the proposed regulations the Director had the job of evaluating the situation to make his own determination as to whether the tenet was a valid exemption item. If he did not agree the exemption would not stand. What happens when the religious institution holds a valid religious tenet that forbids making any report to the agency involved with federal civil rights enforcement? Does this institution get an automatic exemption from all aspects of the bill? American private religious education that neither takes nor asks for any form of State support or aid is supposed to acquiese to federal moral standards concerning sex discrimination when by its own regulations the federal standards destroy the base of morals and self-control with which these schools are benefiting our society.

The voracity with which federal civil rights do-gooders attack religious and moral standards with their regulations makes me wonder if their real purpose is not to regulate society with new moral standards which come from their own pet religion, Humanism.

Aside from the religious institutions and their so called exemption, what happens to the private corporation or individual who holds his own bona fide religious convictions? Their is no exemption for their religious viewpoint. Neither do they have the option of refusing the federal funding which under this bill could be forced upon them. How can a private corporation do business with minority businesses that they would like to help, when to do so could trigger coverage of their own business by these statutes. Will the businessman decide it is worth it to deal with the minority business which got the SBA loan even if it means all the paperwork and regulation of being a "federal financial aid recipient?" Undoubtedly H.R. 700 would make doing business with anyone who received or receives federal aid of any kind much more difficult.

Then lets look at a few practical matters relating to enforcement of this federal brand of morality. The Supreme Court has already stated that a private cause of action exists for remedying civil rights violations under Title IX. (Cannon v. University of Chicago, No. 77-926, decided May 14, 1979) Do we also want to backlog our federal courts even more with litigation drawn from poorly written legislation over which institution or corporation or "other entity" is covered by this act? As it is currently written this legislation makes it unclear whether tax exemption, federal guarantees of a bank account through the FDIC and savings and loan account through the FSLIC, Social Security payments passed on in a church offering plate, or charitable contributions from a federal or state employee would constitute federal financial assistance and thus trigger recipient status.

While the intentions of the authors of H.R. 700 may have some merit, such as the removal of discrimination based soley on race, sex, creed, etc., the end result of this bill is one of utter catastrophe. If passed in its present form, H.R. 700 will end religious educational freedom and bring on some of the most onerous federal bureaucratic burdens private enterprise of all types has ever seen in America. The federal courts think they are over worked now. This bill would not help that situation. It is time in America that we stop to have a long look at our goals of freedom and justice and civil rights, and determine what have we actually accomplished with our bureaucracy. Is it really the job of the government to make all things "equal." Doesn't the church have any part to play in our society? We are in trouble if our government determines and enforces our morals.

Mr. HAYES. Miss Susannah Smith.

Ms. SMITH. My name is Susannah Smith. No, you don't have to let them in. You just can't take the Federal funds back.

I am an assistant Illinois Attorney General. Since Neil F. Hartigan became attorney general for the State of Illinois, he started a Disabled Persons Advocacy Division to ensure that the rights of disabled persons are advanced and protected.

We see H.R. 700 as a bill which is aimed at restoring this nation's commitment to civil rights. We see it as a fairly narrow bill. It doesn't deal with the definition of what is Federal financial assistance. It only ensure that if one program within the university or corporation or hospital takes Federal funds, that that entire entity is covered, not just the admissions office if it's the admissions office which gets Federal funds.

I think it is very important for the disabled to note that the same day *Grove City College* came down a case named *Consolidated Rail Corp.* v. *Darrone* was also decided by the United States Supreme Court. That case didn't deal with education. It dealt with employment, and it dealt with section 504. And yet it referred to *Grove City College* as precedent and returned that case for a finding of what the relevant program was. It is clear then to us that the Supreme Court is going to apply *Grove City College's* reasoning not just to title IX but to all the other civil rights acts, including section 504. And it is not just going to apply to education, but will apply to health, social services, employment, and any other recipient of Federal financial assistance.

This case, therefore, is very important to us. It is extremely important that the Congress reverse that part of *Grove City* because we have nobody else to look to now, basically. It is clear that the administration to not going to seek to help us and that the Supreme Court won't. Really, it is only the Congress we have left who can assist us.

We understand that the Restoration Act does not broaden any of the substantive rights. There will be no more reasonable accommodations required under section 504 as a result of this, nor will there be any fewer. The religious exemption will still be available under title IX.

Not as an assistant attorney general but as a personal story, I would like to tell you what happened when I tried to go to high school and college. I broke my neck when I was 16 in a diving accident. I was attending Milton Academy in Milton, MA. Milton Academy had a lot of steps. After I broke my neck I couldn't go back there. When I was in the Rehabilitation Institute in Chicago here, I had to look around for an accessible high school. I wrote to Francis Parker and the University High School here, and they all had a lot of steps. I finally found one private high school which had no steps.

When I talked to the public high school people here, they said it was their duty to tell me to go to Spaulding School, which was only for disabled people. Then they said, off the record, "Don't go there; you won't be really challenged." In another year I had to start looking for colleges. When I went out to Stanford my interview was in the very lovely courtyard because the dean of admission's office was not accessible. He said we have had people come here from your school before and your credentials are fine, but as you can see, all of our buildings have two stories and you would have to be carried up all these for 4 years.

When I called up Radcliffe, the woman said you use a wheelchair all the time, and we even have trouble when a girl breaks her leg skiing in the winter. A friend of mine inquired at Wellesley and was told, thoughtfully, perhaps you could live in the infirmary.

I went then to what was one of the few accessible schools in the Nation at the time, the University of Illinois. But I had very little choice. Those people who may have to take their student grants somewhere else because some school doesn't want to become entangled with Federal financial assistance are certainly going to have a lot more choice than I had in the mid-1960's, because I had about one choice. I understand that black people may have been able to go to Howard University or Tuskegee Institute, which are fine institutions, as was the University of Illinois, but the fact remains that we really had no choice and we should have a broader choice.

At the end of the 1960s there was a measles epidemic which greatly increased the incidence of deafness. Those people are about to start going to college. They will need interpreters. Section 504 will help them. There are blind people who will need to have readers. Section 504 will help them.

It is not just education which is at stake here, because unless the disabled get an education, they can't find employment. The fact that we have eight people in wheelchairs here today to testify and to listen is simply astounding, because there is very little transportation. The disabled people have had a very difficult time in organizing their civil rights movement because to get more than three disabled people together, I mean, they haven't got enough to block a hallway practically. I mean, we couldn't even have gotten this many people here 10 years ago.

It is therefore very, very important to us. It is not a little matter. Twenty years ago there was nothing. There wasn't one curb cut out. I couldn't get from my office here today without encountering four. But at least there are a few and we hope to get more.

One step in this is to enact H.R. 700. It is not going to solve every problem, but it will at least put it back on the right track.

Thank you, Mr. Chairman.

[The prepared statement of Susannah Smith follows:]

PREPARED STATEMENT OF SUSANNAH SMITH ON BEHALF OF THE ILLINOIS ATTORNEY GENERAL'S OFFICE

My name is Susannah Smith. I am an assistant Illinois Attorney General. Since Neil F. Hartigan became Attorney General for the State of Illinois, he has established the Disabled Persons Advocacy Division to ensure that the rights of disabled individuals are advanced and protected. The portions of H.R. 700 and S. 431 which pertain to discrimination on the basis of disability are of particular concern to the disabled residents of Illinois. The disabled community has as a priority concern the legislative reversal of Grove City College v. Bell. Attorney General Hartigan strongly supports enactment of the Civil Rights Restoration Act.

The basic purpose of the Civil Rights Restoration Act is to reaffirm this nation's commitment to equal opportunity for all persons.

The federal government must ensure that those programs which receive federal financial assistance are prohibited from discriminating on the basis of race, sex, national origin, age, and disability. Since the Disabled Persons Advocacy Division is primarily concerned with disability issues, we will focus on Grove's impact on Section 504, 29 U.S.C. sec. 794. This discrimination has been prohibited in any program or activity which receives federal financial assistance. In 1984, however, the United States Supreme Court decided Grove City College v. Bell ___U.S.___. The Court in Grove City College held that a college which receives federal money in the form of student financial aid is a recipient of federal financial assistance for purposes of Title IX. Nevertheless, The Court found that the only "program or activity" in the college which was subject to Title IX's nondiscrimination provisions was the student financial aid office. The remainder of the college would be free to discriminate on any basis. Because Section 504, like Title IX, is modeled on Title VI, the unduly restrictive interpretation given to "program or activity" in Grove City may be applied to cases concerning the disabled which arise under Section 504. (The Supreme Court decided Consolidated Rail Corp. v. Darrone, ___U.S.___, 104 S. Ct. 1248 on the same day as Grove City. Darrone was a handicap employment case and was remanded for findings as to the relevant program.) A disabled student would receive protections in obtaining student aid under Grove City, but would have no guarantee that the library was accessible. Congress must restore the intent of the anti-discrimination statutes and ensure that federal funds are not used to perpetuate discrimination.

Although Grove City was an education case, its implications are far reaching and will affect the disabled in their quest for employment, housing and other aspects of life which so many take for granted.

Many people assume that handicap discrimination, unlike that based on race, is due to benign neglect rather than animosity. If the end result is that the disabled person is denied admittance to a university, is refused a job, she/he is unlikely to be greatly gratified to hear that it is not from hatred. When a person is refused education or employment, the bottom line is the same when the message is delivered with a smile or a sneer.

Every disabled person can catalogue his or her own list of horrors and problems in education. After my sophomore year in high school I had a diving accident and have used a wheelchair since then. The high school I attended was inaccessible and I had to find one which was suitable. In another year I was looking for accessible colleges. I called the U.S. Department of Health, Education and Welfare to ask if they could direct me to some. They knew of no colleges I could attend but did ask me to let them know if I found any. I had my interview for Stanford in the courtyard because the Dean's Office was not accessible. I was told I could come but all the buildings were two stories and I would have to be carried up flights of stairs for four years. Radcliffe told me that they had trouble when a girl broke her leg skiing in the winter; Wellesley said maybe I could stay in the infirmary. My academic credentials were not addressed because I was unable to pass the physical agility test. This is precisely the inequity which Section 504 sought to remedy; unless Section 504 is restored by H.R. 700, the next generation of disabled applicants will have to face the same rejections that I saw in the mid-1960's.

As the chief law officer of the State of Illinois, Attorney General Neil F. Hartigan feels strongly that all the vestiges of unequal treatment must be stopped. The State of Illinois itself should be a model educator and employer. Indeed, the University of Illinois was one of the first institutions of higher learning in the country which was accessible to the disabled. The State of Illinois is already required by the Illinois Human Rights Act to take affirmative action and to refrain from discrimination. Since the State is accustomed to and actively supports equal opportunity for all, the passage of H.R. 700 will not pose any problems for Illinois.

Mr. HAYES. Thank you.

Professor ORFIELD. I would like to apologize to the committee. I have a prior engagement with our alumni association where we're talking about this exact issue. So I would be glad to answer questions in writing if you would have any, and I will leave for the record some articles on the subject.

Mr. HAYES. We may have to submit some questions to you in writing. But thank you for coming, Professor Orfield.

The final witness of this panel is Dr. Roberts.

Dr. ROBERTS. Thank you, Mr. Chairman. Due to the fact I have recently spent 2 weeks in the hospital, my written testimony will be forthcoming.

My name is James Phillip Roberts. I am the assistant dean of administration at the University of Illinois College of Dentistry. Most of my professional career has been spent in the educational arena, with a little time out for corporate America. I joined the staff of the University of Illinois in 1969. I think I am probably the only person at that University that was twice asked to join that institution rather than seeking employment there. The university obviously felt that I had some particular expertise to invite me to join the faculty in 1969, and part of that was some of my community activities related to the whole question of securing equal educational opportunities for black and other minority youngsters.

I joined the faculty there, and it is interesting that I was so appalled at that time by what I saw that I left the university. I was asked to develop a program with the National Medical Association, called Project 75, a federally funded program out of the then Office of Economic Opportunity, to basically develop programs around the Nation to access more black and other minority youngsters into the nation's professional schools, particularly medical schools.

It was a very interesting experience because I had a chance to move all over the Nation, and even as late as 1969, 1970, and 1971, you could walk into dental schools and medical schools, such as UCLA, or go into institutions such as Harvard, or yes, even the University of Illinois, and discover only one or two or three black youngsters attending those professional institutions.

Indeed, there was a quota system. That quota system generally worked this way: There was one per class, and if for whatever reason they couldn't secure one, they would add two the following year. The University of Illinois, when I joined the staff, had all of two black males in the college of dentistry. There were one or two in the college of medicine, one or two in the college of nursing, and one or two in the college of pharmacy. I remind you, this is 1969, 1970.

One of the first things it was my shocking experience to discover was that we were, in fact, not engaged in equal access, but we were engaged in a political struggle, and it is still a political struggle. In fact, I found that as I moved across the Nation in those years, I had to take the Civil Rights Act of 1964 with me everywhere and read it to most of the deans and other university presidents because many of them still had not come to grips with the fact that this Nation could not discriminate on the basis of race, color, national origin, or sex. It was a very interesting experience.

How did we finally access more minority youngsters into the University of Illinois? Well, we had a meeting at the then Office of the Department of Health, Education, and Welfare, and the regional director said to the dean of the medical school at that time, after we had sat around for a couple of hours and talked about why six black men were not going to be admitted, he finally said to the dean, "After I have looked over the information here, Dean, if the students are not admitted to the University of Illinois, I'm going to review your budget." Magic words. "I'm going to review your budget, since I am aware that the University of Illinois is receiving millions of dollars in Federal funds."

The dean of the medical school turned to the director of admissions—and this meeting was on a Friday—he said, "When will the next meeting be of the admissions committee?" He informed him that that meeting would be on Tuesday. He turned to the regional director of HEW and said, "You can rest assured that those students will be admitted to the University of Illinois' college of medicine." Well, I'm a young man of only about 26, and I had never quite seen anything like that. But it was an eye-opener in terms of understanding how the system worked.

So after I finished my Federal tenure, I returned to the University of Illinois armed with all this new awareness of how the system functions. I immediately started saying to my colleagues, "Well, I suppose we'll have to begin to look at all the new civil rights legislation, and we will have to begin to sit down at the admissions committees"—and I literally would bring in the civil rights laws. Of course, we heard then in those days all of the things as we are hearing now, the new euphamisms for who should be admitted to professional schools, such as selective indexing, or terms such as "the best and the brightest." Those terms are being thrown about a great deal now, but they were thrown about then, too. But the fact was that it wasn't until we armed ourselves with the Federal legislation—because in much of those days the Federal Government was still greatly involved in the financial end in higher education—that admissions committees and others began to admit more minority youngsters.

However, there was such a thing called *Bakke* in 1978. That decision was very interesting because since then we have began to watch, as Dr. Orfield mentioned, a very precipitous decline in the number of minority youngsters in particular being admitted to the Nation's professional schools.

Let me give you another example, going back and just showing you how in dealing with title IX dealing with women. I remember when the dean came back from a meeting in Puerto Rico, he came into an admissions meeting and said to the admissions committee, "Gentlemen—" because there were no women on the admissions committee at that time

> Gentlemen, there will be some changes in the numbers of women that will be admitted to this dental school, because I have just left a meeting in which I was told unequivocally that the laws were going to be obeyed by everyone.

When I joined the staff at the University of Illinois there was one women in the dental school. Today there is about 30-35 percent of dental school clients who are female. We look at professional schools in other areas, such as medicine, we find law schools and medical schools where it is fully sometimes 50 to 55 percent of the students matriculating to those institutions are female.

Let's look at the narrow interpretation that the Supreme Court came down with in the *Grove City* decision. I have been the recipient of thousands of dollars in Federal funds. When those funds arrive at the university, there is something that we have called indirect costs, and whatever number of thousands of dollars I have received—it has been upwards of $1 million—the university takes its share, 8 cents on every dollar that I bring into the university. Those funds are dispersed throughout the university. If a white youngster walks into my office and he needs help, because those funds may have come in for black youngsters, I wouldn't dare ever say to that young person "You will not receive any of the services that are available in this dental school."

So I must stress to you that Federal funds, when they come to a university, they move throughout the total system, so that it is very necessary that in H.R. 700 you have that kind of broad scope in looking throughout the university system because the money moves throughout that university system.

I also find it very interesting that this case involving *Grove City* and *Bell* involves an institution of higher education. We are now moving into an information age. The smokestack industries will be things of the past. Education, particularly higher education, is the key. It is no accident that we see now this sort of narrow interpretation going on relating to these types of institutions, because as we move into the high tech information society which is here now, minority groups understand there precisely what the score of this game is.

I think the question has been raised many times. While this was the law of the land, there will be no going back to the way it was before. We are now engaged in an epic struggle at the University of Illinois. We have had a decrease, since 1978, of something like almost 70 percent black enrollment at the University of Illinois.

Senator Dick Newhouse convened a hearing several months ago and it has created a storm of controversy in this State, and rightly so, because we are going to hold our institutions accountable—they must be held accountable—and we cannot allow any institution of higher education engaged in the question of education receiving Federal funds, State funds, municipal funds, they are still public funds. It is ludicrous to me that any institution involved in the whole question of education could even think of using tax money to further its own narrow goals.

Therefore, I would hope that this committee will move forward very expeditiously, any way we can help to broaden the scope to assist in reiterating our commitment to fairness and justice, that those of us in the schools of higher education will do our share in seeing that the laws are carried forth.

Thank you.

Mr. HAYES. Dr. Johnston, could you just enlighten us as to the percentage of enrollment at Wheaton College of blacks, women, and handicapped?

Mr. JOHNSTON. We have about 50 percent women, approximately. The percentage of minority students is around 5 or 6 percent.

Mr. HAYES. Out of a total of——

Mr. JOHNSTON. Of 2,500 students, approximately. And the other question on handicapped, I don't have the statistics on handicapped.

I would like to make this comment, though, in response to the early comment made about Wheaton College. That may well have been true at that time. I can tell you today that, as I said in my opening statement, Wheaton College has agreed to abide by section 504. We have put in ramps all over our campus. All of our new facilities have complete access throughout the facilities. Every facility, as it is being renovated, is being made available to handicapped students. And for those students who come where we don't have access right now, we alter our programs so that the program will be accessible to those students.

So I was chagrined to hear that. I am sorry that took place. I can say that it doesn't take place today at our college.

Mr. HAYES. You are aware that the civil rights statutes have existed since 1964 and your institution and others like yours have been covered by these antidiscrimination provisions for all this time.

Can you describe in what ways the Federal Government has intruded into the operation of Wheaton College, or any one of your sister institutions?

Mr. JOHNSTON. We have not had difficulty at Wheaton College in complying with these nondiscrimination statutes, and we have made it our position to abide by them. We have considered ourselves recipients. We have applied them throughout our entire institution.

We have had difficulty in the one particular situation that I described, and that is, we have moral and religious tenets that we felt in some specific occasions would conflict with interpretations of regulations that had been issued under title IX. So we applied for a religious exemption, as the law allowed. We received back from, at that time, the Department of Health, Education and Welfare a letter which stated that because we were not controlled by a church, it was questionable as to whether that exemption would apply to us. We responded that we felt, because we are a religiously-oriented college, that it would apply, but it has never been settled.

Other than that, I can speak of no difficulties that we have had as an institution from intrusion because of these laws and regulations.

Mr. HAYES. This question is directed to either you or Attorney Keen, or both.

H.R. 700 doesn't change either the definition of a recipient before *Grove City* or as the Supreme Court viewed it in the *Grove City* decision. Are you asking for something other than a restoration of the civil rights laws that existed prior to *Grove City*?

Mr. JOHNSTON. Since the mike is here, I'll try to answer it, and perhaps Mr. Keen has a different answer.

We are only asking, in our case, for Wheaton College, for a clarification of the religious exemption, as to whether it applies to us. That is not at issue in the particular wording of H.R. 700. In other words, we have no problem with the attempt in this legislation to make it apply to our entire institution because students come to Wheaton College receiving Federal assistance. That is not an issue for us. We are perfectly willing to accept that.

So yes, we are asking, while this Act is going through Congress, that it not only restore the broadened definition, but that it restore our right to free exercise of religion as well.

Mr. HAYES. Mr. Keen.

Mr. KEEN. We're not asking for restoration of any kind. What we are asking for is clarification of the definition of Federal financial assistance recipient, and then protection in the form of exemption that will stand up before all of the entities that could potentially be affected by the bill.

Mr. HAYES. I might say, just by way of comment, as an attorney, in your opening remarks you quite skillfully stated your views. It is hard for me to delineate between your views and your clients' views.

Mr. KEEN. They would be the same, sir.

Mr. HAYES. All right. Because you seemed to say, in effect, that you think the handicapped and the minorities ought to have a fair trial, but the sentence is already predetermined.

Mr. KEEN. What I feel, sir, is that the handicapped should, in every possible way, if there is a public institution taking direct Federal aid, we have no question or problem whatever.

Our problem is this. We have private schools and religious institutions that don't take a dime of Federal aid and refuse every opportunity to do so, and yet now we find ourselves being dragged under the regulations when we can't afford it and it would conflict with our moral position.

Mr. HAYES. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I would like to pursue this religious exemption question a little bit more with Mr. Johnston and Mr. Keen, because I think this is one of the problem areas of this bill and we really don't know what the bill does relative to the religious exemption, and before Congress passes it, we ought to.

My first question would be, in either of your opinions, does this legislation in any way modify the present religious exemption that is contained in the regulations?

Mr. JOHNSTON. In my opinion, no.

Mr. KEEN. In my opinion, it doesn't necessarily modify it because the regulations haven't currently been written on that. We only have past regulations and past proposed regulations to work from. The past proposed regulations were very detrimental, leaving the decision with the Director. The current, in fact, effective law regulations do state an exemption, but they are extremely unclear as to what will happen when an institution claims an exemption and yet the Director doesn't necessarily think it's a good one.

Mr. SENSENBRENNER. Let me take this one step further with a specific instance. Many churches, and not just the Catholic Church, have very deep-seeded religious convictions in opposition to abortion. I think it is generally conceded that the acceptance of guaranteed student loan kids and Pell Grant kids and GI bill kids would make the institution a recipient.

Would the religious exemption, as it is presently interpreted, exempt the student infirmary from performing abortions?

Mr. JOHNSTON. That is the very concern that we have. The regulations themselves, under title IX, specifically state that an institution cannot discriminate because someone has had an abortion. The religious exemption may provide such an exemption, but the way the regulations are presently worded, it leaves it to the Director of the Department of Education to determine whether that religious tenet of the institution does conflict with that particular regulation. That is one aspect of the problem.

Mr. SENSENBRENNER. In other words, you would be having a Government official making a religious evaluation?

Mr. JOHNSTON. He would evaluate whether or not our view was held deeply enough, I suppose, in order to conflict with that particular regulation which prohibits discrimination on the basis of having had an abortion.

The second aspect of it, however, is that the way the regulation is now worded, it says that the institution must be controlled by a religious organization. Well, there are literally large numbers of colleges, universities, and other schools which—assuming now we're talking about recipients, and we would be in that category of being a recipient—who are in a situation that they are independent. We have independent boards of trustees that are affiliated with church groups or related in various ways but are not controlled by those groups. We feel that the same exemption, to the extent it applies to a college which is, say, a Presbyterian-related college with some kind of nominational affiliation, should apply to a college with the same identical religious views but which is not controlled by a church.

Mr. SENSENBRENNER. Let me use one example that comes to mind immediately. Notre Dame University, which is an institution of some repute in this part of the country, is not controlled directly by the Catholic Church, in that it is not an institution that is established in whichever diocese it is located in. Rather, it is controlled by a religious order.

Under the present regulation, is there a significant difference, or is this one of those grey areas to which you're referring?

Mr. JOHNSTON. That's exactly the grey area. We have taken the position, and would hope that we could be considered as being sponsored by a religious order, or that it would be applied in the same way to us, but we have no assurance of that. That is why we support using the same language for the religious exemption under title IX and these other nondiscrimination statutes as is used in title VII of the Civil Rights Act of 1964.

Mr. SENSENBRENNER. Mr. Keen.

Mr. KEEN. Yes, sir. I do feel there are definite problems with the exemption language and I do feel it would cause definite problems with this matter of a religious organization controlling the educational institution involved. The same difficulty Wheaton would have, all of our schools would have—not necessarily all of them, but many of them would have. There are certainly a number that are church controlled, which would be able to avoid that ostensibly.

Mr. SENSENBRENNER. I think one of the things that all of us can agree upon is that one of the purposes of the drafters of the first amendment to the Constitution was to get Government officials out of the business of deciding what is good religion and what is bad religion. I think you both have pointed out an area that we do need to have some explicit clarification on, lest we get into a whole bunch of very expensive litigation.

I would just point out that we are here today because of some sloppy drafting and unclear drafting by Congress in 1972 that resulted in the *Grove City* decision 12 years later. It seems to me that if this committee is interested in preventing a future *Grove City* case from arising, we had better be pretty explicit in determining exactly what the intent of Congress is and to settle first amendment type questions such as you two gentlemen have very eloquently raised.

Thank you.

Mr. HAYES. Assistant Illinois attorney Smith, did you want to comment?

Ms. SMITH. Just that the religious exemption is not changed or affected either way, as I understand it, by H.R. 700. I don't understand why, if the purpose of this is simply to return to pre-Grove, the religious exemption should be a part of this. I mean, I understand it is the same as it was previously. Is that correct?

Mr. SENSENBRENNER. Well, I would disagree with that, although I am sure my colleagues would disagree with me. I have a rather extensive legal analysis before me by the General Counsel of the U.S. Catholic Conference which can be summarized in one sentence from him: "Broad generalizations, that either the House bill or the Dole bill would merely return the law to its prior state, do not accurately describe the situation."

Now, this is one of the major concerns that this committee is going to have to address, whether the bill is merely restorative or whether it is not. I think it can be arguably stated that the Dole bill is not restorative because the *Grove City* decision merely interpreted title IX, whereas the House bill includes title VI of the Civil Rights Act, section 504 of the Rehabilitation Act, and the Age Discrimination Act.

I personally think that if any of the other three civil rights statutes were litigated at the present time, the same result would occur in that litigation as resulted in *Grove City.* So if we're in the business of restoring, we ought to do it in one bill with all four statutes. But I think we had better be very careful that we simply bring the law back in all four statutes to where it was prior to *Grove City* and not make *Grove City* a precedent in any other litigation, rather than using this as a crutch to expand Federal jurisdiction. There has been some rather convincing testimony that we have taken that indicates this bill does go beyond what was the law prior to *Grove City.*

Mr. HAYES. Congressman Hawkins.

The CHAIRMAN. I'm not so sure, Mr. Keen, in the statements that you have made, that the association of schools that you represent are, indeed, receiving any Federal assistance at this time.

Mr. KEEN. I would have to say I hope that that's so. We are not receiving Federal assistance. We would refuse Federal assistance of any kind, municipal or otherwise, and we intend to operate our schools and churches without any kind of Federal, State, or any other form of public money whatever.

However, our concerns are grave because the Civil Rights Commission has, since 1975, advised that tax-exempt status should be considered a direct Federal form of aid. We don't want that to be——

The CHAIRMAN. Let me be more specific and to the point. Are any of your students receiving Pell Grants, supplemental educational opportunity grants, any college workstudy program, assistance of any kind?

Mr. KEEN. There are none of those kinds of grants. However, our schools, the ones I represent, would be primarily elementary and secondary level.

The CHAIRMAN. Do you have any postsecondary schools?

Mr. KEEN. We have no postsecondary in our associations. We certainly express the view of the postsecondaries, that we're concerned about that. Why should we not be able to serve those of our faith simply because they happen to need this assistance?

The CHAIRMAN. Is it your position, then, that you do not receive, either directly or indirectly, any Federal assistance, and therefore you should be exempt?

Mr. KEEN. Well, if that was so, and if we could say we don't receive any Federal assistance and have established law to show that, we wouldn't be here today. The bill wouldn't cover us. But we are uncertain as to where the definition of Federal financial assistance will come down. Where is it going to be decided?

The CHAIRMAN. Well, if you are not receiving any Federal assistance, I don't see where H.R. 700 should disturb you at all.

Mr. KEEN. Absolutely. I agree with you. You're right. The problem is, we fear that it will be——

The CHAIRMAN. So why are you opposing it then if you're not covered?

Mr. KEEN. Because we fear that it will be imputed to us that we are receiving Federal financial assistance, those several different ways I mentioned. What happens with the tax-exempt status?

The CHAIRMAN. Under which of those do you think you will be covered? Let's take the postsecondary activity. Let's confine it to title IX. Are you anticipating that, as an elementary or secondary school, you are going to be covered by title IX?

Mr. KEEN. Quote potentially so. All it would take at this point is someone to file suit claiming that our FDIC protection on our bank account gives us a form of Federal aid. We have a $100,000 a year guarantee on our bank account, that if the bank goes bust, we get our money.

The CHAIRMAN. Well, let me say that this bill in no way affects those who are not recipients, so I think that should clarify it for you.

Mr. KEEN. Well, if we could clarify it with specific language, I think everybody might be a little happier.

The CHAIRMAN. Well, you had better clarify the law as it existed prior to *Grove City,* then. You're not talking about what happened in Grove City, because that was well established. Grove City was definitely a recipient under the *Grove City* decision, so we are not disturbing it, nor did Grove City College challenge that decision.

Mr. KEEN. Well, they did challenge the decision. They——

The CHAIRMAN. So as to a recipient, H.R. 700 got away from that months ago because of some clarity which was provided on the Senate side. So as to a recipient, it seems to me you should not be disturbed.

Mr. KEEN. Would you, as our friend in Congress, be willing to sponsor language in the form of an amendment?

The CHAIRMAN. I'm not the your representative in Congress. I would suggest——

Mr. KEEN. Yes, sir. I said as a friend, not a representative.

The CHAIRMAN. Well, certainly not with your view as you expressed it today.

Mr. KEEN. I understand that, sir.

The CHAIRMAN. You had better find someone else to express your view in Congress. I'm only expressing the view as a sponsor of H.R. 700.

Mr. KEEN. Would you be willing to clarify that issue as regarding tax-exempt status and——

The CHAIRMAN. I have already said that a recipient is in no way affected by this bill, and we are simply trying to restore the pre-*Grove City* interpretation and not get into a definition of recipient. We went through that for months last year. Some of us felt it was necessary to then shift the operation completely to a different approach. So I suggest you restudy your position in terms of the new approach, which we are now presenting, and not try to confuse it with the approach of last year, which perhaps did cause you some concern. We are not trying to define a recipient. We are trying to define "program or activity," and the bill specifically sets out the standards as to coverage, not disturbing at all the remedy, the pinpointing of the remedy. That's all the bill attempts to do.

Now, I can't get into all the hypothetical situations that you might dream of, because you have apparently spent a lot of time trying to think of every possible thing, and want one bill to correct everything that you dream of.

Mr. KEEN. Well, if we didn't have the litigation problems that we fear, we wouldn't sit around dreaming about how people are going to come after us. It is not dreams. Unfortunately, it has been borne out in fact.

The CHAIRMAN. Well, if you're not disturbed by student assistance in those who attend your different institutions, I think you might just——

Mr. KEEN. We are disturbed about the limitations placed upon us if we allow students to come who get this form of assistance. What we would like is to have the exemption——

The CHAIRMAN. Well, eventually, then, you intend that they do get the assistance; is that it?

Mr. KEEN. We would love to see everyone who would ever want to come to our school get all the assistance available. Our problem is we can't allow them to come to our school if we're going to have all the other limitations placed upon our school.

The CHAIRMAN. Well, I would suggest you face that problem when you reach it, but don't try to cross the bridge before you get to it.

Mr. KEEN. Is this not the time to cross that bridge? Why should we wait until we end up here in a courtroom?

The CHAIRMAN. Well, if you intend to discriminate with Federal funds, it is the time to worry about it. But I would say——

Mr. KEEN. The only concerns we have are the concerns——

The CHAIRMAN. I would say if you don't intend to discriminate, and you don't intend to get any Federal funds, then I would say you have no problem. Operate on your own. I think Mr. Roberts indicated what happens to the Federal money that comes into an institution. I understand that Wheaton College does get a substantial amount of student assistance.

Mr. JOHNSTON. Yes, sir, and we are prepared to abide by these regulations and, in fact, we are not opposed in any way to the intent of H.R. 700, which is to apply it to our entire institution. We have had that as our policy and are willing to continue that way.

The CHAIRMAN. Well, you indicated in the prepared statement that "The specter of vesting authority in Federal agencies to regulate the academic programs of institutions such as Grove City which benefit only indirectly from Federal financial assistance," that phrase causes me some concern, that what you are doing is interpreting—and correct me if I'm wrong—you are interpreting this financial assistance that you have been receiving, which approaches probably near a million dollars, as indirect Federal financial assistance.

You're not saying that, I hope?

Mr. JOHNSTON. No, sir; not about Wheaton College. You have to distinguish between this presentation in behalf of Wheaton College and also on behalf of other schools. With respect to Wheaton College, we do participate in these programs. We recognize that we are recipients. We do comply with these regulations and statutes.

However, we feel that there are other institutions which do not consider themselves to be recipients, and in that capacity I am speaking on their behalf. But we don't have any quarrel with——

The CHAIRMAN. Do they receive Federal assistance in the form of BEOG or Pell Grants, or other types of assistance, and feel you should not be covered?

Mr. JOHNSTON. Yes, sir; in a particular case. Now, you have to distinguish there are several ways of handling Federal financial assistance for students. At Wheaton College it's a campus base program. Those funds come to our college and we distribute those funds to students, and we understand that by participating in that program we are recipients of Federal financial assistance.

We feel, however, for a school which does not do that, where students go and apply to a bank for their own guaranteed student loans——

The CHAIRMAN. Let's confine it to a Pell Grant to make it a little more specific.

Mr. JOHNSTON. OK. For a student who applies for a Pell Grant, they receive it directly from the Government agency and not through the college, that that should not be considered——

The CHAIRMAN. But it is used by the college. It goes to—

Mr. JOHNSTON. No, sir; it goes to the student.

The CHAIRMAN. Well, what does the student do with it?

Mr. JOHNSTON. Well, sir; let me continue on to respond, then.

The student uses it to pay for his expenses in attending the college. But let me go further. The same logic would also apply then to that student when he takes that Pell grant to pay for his room and board at a neighboring home, or when he goes to a book store to buy books to go to college, and the same logic would say that then those privately-held organizations are also Federal recipients. The point has to do with who is a Federal recipient.

Again, I want to distinguish that part of my presentation in defense of a school who feels they don't want to participate in a program and one like ours which does.

The CHAIRMAN. Well, I think you're making a very fine distinction, which certainly was settled in *Grove City,* in which I think they felt the same way that you do in terms of these other institutions, other than Wheaton. But I think, as Mr. Roberts described, what happens to the money that goes to the student, the student goes to college with it. As a result of that, you hire faculty and you build a building and you do a lot of other things. A part of that money is based on the fact that this student goes to that institution. You can't really separate what the institution gains from it, from the form of Federal assistance.

I assume that's why you use the words "benefits only indirectly," and, I think, that is the distinction that you want to make in that type of assistance. That, of course, would completely break down the law and allow an institution to use the money, let's say, in the financial aid office and discriminate in every other activity within that institution, which is precisely what we're trying to avoid.

Mr. JOHNSTON. Representtive Hawkins, that's not the point that I'm trying to make. The point——

The CHAIRMAN. Do you agree that that should not occur?

Mr. JOHNSTON. Yes, sir, I agree with that. I agree with you on that point. The point has to do with those schools who are seeking to avoid that connection. Again, I have to distinguish between my own institution, where we do participate in the program and we accept the fact that we are recipients, our primary concern at Wheaton College has to do with the religious exemption.

The CHAIRMAN. Well, I don't want to mix you up with these other institutions, that hypothetical case, because I think we still need the facts on which to discuss those. But I commend Wheaton College for the progress that it has made, and certainly to that extent, I thank you. Your testimony was very helpful.

Thank you, Mr. Chairman.

Mr. HAYES. Thank you.

I want to say to the witnesses thanks for what has been excellent testimony. Even though the views have been divergent, you expressed yourself well.

I would like to request, Dr. Roberts, if you would submit to us at a later date your written testimony, it would be quite helpful to us.

Now, the committee will stand in recess in following the common American custom of going to lunch. We will return at 1:40.

[Whereupon, at 12:35 p.m., the joint committees recessed for lunch, to reconvene at 1:40 p.m.]

AFTERNOON SESSION [1:45 P.M.]

Mr. HAYES. We would like to resume our hearing by calling the next panel, Attorney Eric Miller from Indianapolis, IN; Mrs. E.R. McCracken, Illinois Small Business Association, Bolingbrook, IL; and Edwin R. Clarke II, president, American Federation of Small Business, Lake Forest, IL.

Attorney Miller.

STATEMENT OF ERIC MILLER, ESQ., EXECUTIVE DIRECTOR, CITIZENS CONCERNED FOR THE CONSTITUTION, INDIANAPOLIS, IN; ANNE McCRACKEN, ON BEHALF OF THE ILLINOIS SMALL BUSINESSMEN'S ASSOCIATION; AND EDWIN R. CLARKE II, PRESIDENT, AMERICAN FEDERATION OF SMALL BUSINESS, A PANEL

Mr. MILLER. Thank you, Mr. Chairman. It is a privilege to be here today. My name is Eric Miller and I am the executive director of a group entitled Citizens Concerned for the Constitution out of Indianapolis, IN, primarily dealing in the area of individual freedom versus governmental control. I am also a private practicing attorney.

I was involved in the Civil Rights Act of 1984 because I saw it as an intrusion into individual freedom and went beyond what the stated scope was. I am here today to air my concerns on the proposal, the Civil Rights Restoration Act of 1985, not because I am in favor of discrimination in any way but, instead, because I am opposed to any unnecessary expansion of Federal power which would be to the detriment of the private sector.

In 1984 we saw the defeat of the Civil Rights Act of 1984 because I believe it was not carefully drafted. I am concerned as well that in its present form today it is not carefully drafted to do what the people are stating it will do. The bill suffers, in my opinion, from the same flaws.

No. 1, I believe the bill has a problem with its labeling. I believe the bill does not restore anything since the *Grove City* decision merely followed a long line of cases supporting the program's specific language in title IX. It would be bad enough if the proponents merely infringed upon the freedom of private colleges and universities by way of H.R. 700, but I believe the bill goes much further.

The *Grove City* decision, in my opinion, has provided the vehicle for those who want to vastly expand the power and reach of the Federal Government into virtually ever facet of American life. The bottom line with this bill is this: every small businessman, every farmer, every independent contractor, every private school, every not-for-profit organization, like a church or hospital, will not be free from the overzealous bureaucrat or activist Federal judiciary. Instead of restoring civil rights, H.R. 700, in my opinion, destroys freedom.

A more accurate description in labeling on this bill would be "The Federal Government Extension Act of 1985", or "The Big Brother Act of 1985." I believe that Congress should follow the admonition of Abraham Lincoln, where he said "Let the people know the facts and the country will be saved." I believe if the people around American—and I commend this committee for going out into the land of America—were to understand the true reach of this bill, that the resulting sound in Washington would be one that is resounding.

Only by, in my opinion, continuing to label the bill as a "*Grove City* Reversal Act" can the supporters and proponents hope to hide the truth from their constituents and the Nation. If all the bill did was to speak to the law concerning private schools and colleges, Mr. Chairman, we would not have a business panel this afternoon. But in 1984, the Civil Rights Act of 1984 gained the opposition and concern of the American Farm Bureau, the American Hospital Association, the Chamber of Commerce, the National Association of Counties, the National Association of Manufacturers, the National Grocers Association, and many, many more. This never would have materialized had not the Civil Rights Act of 1984 gone much further beyond the scope of reversing part 2 of the *Grove City* decision.

Since H.R. 700, in my opinion, is more reaching in scope than even the Civil Rights Act of 1984, one can be assured that I believe the small businessmen and their groups and the trade associations will rise up in opposition as well to what I believe to be a misnamed bill. Senator Mathias echoed as much in the Congressional Record when he said that this legislation is not fundamentally different from last year's civil rights bill, the scope of the bill.

There are no real parameters in the bill as I see them telling the Federal Government where to stop and to go no further. Instead, the preamble of H.R. 700 says the bureaucrats and the courts are to consider all of the regulations and prior administrative practices of the various funding agencies, of which there are about 28. It is fundamentally wrong, I believe, legislatively, to incorporate by reference this staggering body of administrative and regulatory practices that are not only internally inconsistent themselves, but inconsistent with one another. This lack of specificity provides citizens with no certainty as to just how far a bureaucratic agency or Federal court will go in attempting to stamp out what they believe to be suspected discrimination. What this nebulous and confusing bill does do is provide an avenue for enterprising bureaucrats, energetic attorneys, and activist judges to interpret the law as broadly as they choose.

History should teach us that we should not count on bureaucratic commonsense or judicial restraint. In my opinion, this is a vastly complicated and complex bill and is a confusing one that ought not to be.

I will bring up the issue, if you will permit me to, Mr. Chairman, to ask the question, as they do in the commercial "Where's the Beef?" Because I believe that if all we're talking about doing is restoring pre-*Grove City* law, that it can be done very simply. That is to do what Representative Schneider did when she introduced her bill to add the word institution to program or activity. Instead, what we have done is encompassed the business community, farmers, nonprofit organizations like hospitals, and there has not been any showing to delve into the private sector, there has been no documentation, to support this eradication of our freedom. There has been no demonstrated need to justify such a vast expansion of Federal authority and control.

Just as the commercial asks "Where's the Beef," I would ask Congress to consider this question, "Where's the Need" for such a vast expansion?

It impacts specifically on the business community. All the corporations' business, under the terms of H.R. 700, would be covered if only one area received Federal funds. Presently, only that operation that receives Federal financial aid is covered.

The notice of coverage. A businessman may not know if he is dealing with someone who has dealt with someone who is tied to one Federal dollar. If he does, under the terms of the bill he may be covered. An example is an independent contractor dealing with a plant whose corporate headquarters receives a training grant. A basic tenet of American jurisprudence is that a person must be given notice of a law before he can be expected to comply with it. In my opinion, with the way the bill is written, no one can say with certainty who will and who will not be covered.

There is no exclusion, Mr. Chairman and members of the committee, for the ultimate beneficiary in the bill. There is no exclusion for this person, which can be an individual, and I believe there ought to be. For the first time farmers run the risk of being covered by these four statutes if they receive a crop subsidy or accept funds from a disaster relief program. A businessman who receives a small business loan may also be covered.

I believe there will be a proliferation of litiation. All four statutes permit private action by citizens which could result in an award of attorney fees. But even if the businessmen is successful in defending himself, he has lost time and has had to expend money defending himself.

There is no one that has been left out, Mr. Chairman. In the closing subsection the bill says—and I quote—"This bill covers any other entity determined to be covered in a manner consistent with the coverage provided with respect to the entities described in the preceding paragraphs."

I was here for the panel earlier when they spoke about a college student who is going to a college, who receives a loan, and then carries that loan with him into the college. That form of indirect aid now triggers institution-wide coverage of that college. It would be my contention that any other flow of Federal dollars, be it a veterans benefit or be it a social security pension, that that individual carries with him in the form of Federal dollars to each business establishment will likewise trigger coverage as well.

There is also an unequal treatment of entities. I appreciated Congressman Sensenbrenner mentioning that there is a difference in the way that State and local governments are handled and the way that private enterprise is handled. I believe, based upon those stated rationale in either the Congressional Record or statements by the proponents, that there is no rationale for that except to diffuse part of the opposition to the bill.

The paperwork requirement that will be foisted upon private business will be staggering. Compliance reviews will be mandated. The cost of scale and the mountain of red tape will be borne by the one who pays for all governmental regulations—the private consumer.

Unanswered question. I would submit to the committee that the following questions have no answers, except possibly to say yes, they're covered.

Will the farmer or rancher that receives Federal price supports or crop insurance subsidies or disaster loans be covered under H.R. 700? Will "mom and pop" grocery stores or supermarkets, because they receive food stamps, be covered? Will a funeral home be covered because it accepts military burial benefits? Will a retail outlet be covered because it accepts payment for goods or services from an individual who receives Social Security benefits? Will a company that sells materials or leases equipment to a federally-funded project be covered? Will a nonprofit group, such as a church or charitable organization or hospital, be covered merely because they are tax exempt? Will all vendors who do business with a State or local unit of government be covered? Will a landlord be covered if he accepts a rent payment from a tenant who is receiving financial assistance from the Government? And the list could go on and on.

In conclusion, I would like to applause the joint committees for their willingness to travel around America and let us have some input on this important piece of legislation. In my opinion, H.R. 700, in its present form, being complex, nebulous and confusing, is unamendable. I would contend, instead, that the starting point would be Representative Schneider's bill of 1984 that merely added the word institution. Then you would acquire institution-wide coverage without jeopardizing the coverage of the businessman, the farmer, and every private entity, including those that are nonprofit. The need for H.R. 700 is done without any demonstrated need or justification.

More appalling, however, in my opinion, as I close here, Congressmen, is the fact that this bill has never carried the proper name to it. I believe that the Grove City Reversal Act can be obtained without opposition from the business community or the hospital association or the Chamber of Commerce, merely by speaking to institution-wide coverage, how be it even all for civil rights statutes, without getting into the definition of program or activity.

In closing, I want to tell you this, that last year, Congressman Hawkins, we changed the definition, or they attempted to, the definition of recipient. That, in my opinion, included almost everyone—or at least it was confusing to me as to who was not covered. However, I believe under the present statute, by taking program or activity and so broadening it—and I quote: to cover any part or all the operations of an entity, any part of which is extended Federal financial assistance", and then tacking on to the end "any other entity in a manner which is consistent with those above-mentioned", that we have, in essence, swallowed up the definition of recipient.

I believe the issue of getting on with the program of civil rights ought not to be if we would merely take existing statutory language, amend it appropriately if we're going to overturn *Grove City,* part 2, and then go on about the business of Congress.

Thank you.

[The prepared statement of Eric Miller follows:]

PREPARED STATEMENT OF ERIC I. MILLER, EXECUTIVE DIRECTOR, CITIZENS CONCERNED FOR THE CONSTITUTION

Mr. Chairman and Members of this Joint Committee, I appreciate the opportunity to appear before you and to offer my remarks and to air my concerns with regard to H.R. 700 which is entitled "The Civil Rights Restoration Act of 1985."

My background is one of a practicing attorney who has specialized in Constitutional law and who has spent a number of years working in the governmental arena for the State of Indiana. I am the Executive Director of Citizens Concerned for the Constitution, a non-profit, educational organization that is dedicated to preserving the delicate balance between government and the private sector. The organization is dedicated to insuring that individuals are free from unwarranted governmental intervention in their lives.

WHY ARE WE HERE?

The supporters of H.R. 700 have stated that it is their intent to merely overturn the Supreme Court's *Grove City* decision of 1984. [1] The bill before this committee only speaks to the second part of that decision where the court held that only the education program or activity of the college that receives federal financial assistance is covered under the provisions of Title IX of the Education Amendments of 1972, 20/U.S.C./1681 *et seg*. In the case of Grove City College it was the financial aid office.

The first part of the Supreme Court's decision is important to mention. The Court held that federal aid given to students (indirect aid to the college) was federal financial assistance to the college and therefore sufficient to trigger Title IX coverage. This aspect of indirect aid will be discussed later in my analysis.

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[1] *Grove City College* v. *Bell*, 104 S.Ct. 1211 (1984).

Shortly after the Supreme Court's decision, those who wanted to extend Title IX coverage institution wide introduced a measure which would do just that, and nothing more.

The allegation was made that institution wide coverage was what Congress had intended when it enacted Title IX and was consistent with the interpretation by the courts prior to the *Grove City* decision. A review of the relevent decisions clearly shows that the program-specific ruling by the Court in *Grove City* was consistent with existing case law. 2/

A Congressional proposal which only adds the word "institution" to the existing "program or activity" language of Title IX would be an expansion of federal authority over educational institutions. In my opinion, such an expansion should only be made if the first part of *Grove City* is overturned as well. In other words, if we are going to have institution wide coverage of an educational institution, then the federal financial assistance that triggers such coverage should be *direct* rather than indirect. A definition of "federal financial assistance" which follows would accomplish this.

2/ E.g., *Hillsdale College v. Department of Health, Education and Welfare*, 696 F.2d 418 (6th Cir. 1982), *vacated and remanded*, 104 S. Ct. 1673 (1984) in light of *Grove City College v. Bell*, 104 S. Ct. 1211 (1984); *Rice v. President & Fellows of Harvard College*, 663 F.2d 336 (1st Cir. 1981), *cert. denied*, 456 U.S. 928 (1982); *University of Richmond v. Bell*, 543 F. Supp. 321 (E.D. Va. 1982); *Othen v. Ann Arbor School Board*, 507 F. Supp. 1376 (E.D. Mich. 1982), *aff'd* 699 F.2d 309 (6th Cir. 1983); *Bachman v. American Society of Clinical Pathologists*, 577 F. Supp. 1257 (D.N.J. 1983).

> Federal financial assistance is funds or property originating under a program of the federal government or an agency thereof and granted or conveyed directly to an entity; provided however, that an individual is not an entity.

One additional amendment concerning educational institutions would be necessary to insure the integrity of religiously affiliated colleges and universities. The following language, inserted at the appropriate place in Section 901(c) of Title IX would accomplish this and prevent needless confrontations between the federal government and religiously affiliated colleges and universities.

> This section shall not apply to an educational institution which is an integral part of the religious mission of a church, or which although not part of such mission, is pervasively religious in character, and for whom application of this subsection would conflict with religious tenets or convictions of such institution.

Were these two amendments to be included in a narrowly drawn legislative proposal which merely extended the scope of Title IX to include "institutions", the measure would have passed in 1984 and we would not be here today. Testimony would confine itself to educational entities and a panel to discuss business concerns would not be necessary.

However, we are here today because the proponents of the "Civil Rights Restoration Act of 1985" and the "Civil Rights Act of 1984" saw the Grove City decision as the vehicle whereby they could vastly expand the power and reach of the federal government into virtually every facet of American life. Not only are colleges and universities threatened by H.R. 700, but every institution regardless of its size, both public and private, is brought under the umbrella of federal control. There is no end to the mischief that will occur under the provisions of the bill to state and local governments, large corporations and family owned businesses, farmers, non-profit entities like hospitals, and individuals - all under the guise of Grove City legislation. Numerous groups, in response to the "Civil Rights Act of 1984" presented serious concerns they had about the bill or objected outrightly to the sweeping scope of the bill. These included groups that would never have gotten involved in a proposal to merely overturn the second part of Grove City. Some of the groups were The American Farm Bureau, The Catholic Conference, The Chamber of Commerce, The American Hospital Association, The National Association of Counties, The National Association of Manufacturers, The National Grocers Association, and The Federation of Independent Businesses.

TRUTH IN LABELING

If the proponents of the "Civil Rights Restoration Act of 1985" like their counterparts who sponsored the "Civil Rights Act of 1984" were to heed the admonition of Abraham Lincoln to let the American people know the facts - the outcry from the tool and dye shop operator in Mattoon, Illinois, to the secretary in Indianapolis, to the farmer in Ames, Iowa, to the factory worker in Detroit, Michigan to the corporate executive in Chicago would be instantaneous. Only by continuing the facade of a Grove City "Restoration" Act to insure that women have equality in athletics can the proponents of this bill avoid the wrath of their constituents.

FREEDOM FOR THE PRIVATE SECTOR DESTROYED

ANALYSIS OF THE BILL

CONGRESSIONAL INTENT

One does not have to look far for the cover-up by the proponents of the true nature of the bill.

The "stated" Congressional intent is found in the opening of the bill under the "Findings of Congress." Paragraph (2) of Section (2) states that Congress finds that "legislative action is *necessary* to *restore* the *prior consistent* and *longstanding* executive branch interpretation and *broad*, *institution-wide* application of those laws as *previously administered*." (emphasis added)

The businessman, farmer and individual in America will be caught off guard because of the use of the words, "necessary, restore, prior consistant, long standing, and previously administered." Again, the case law prior to *Grove City* was almost unanimous in holding that Title IX was "program specific" rather than institution wide. There is therefore nothing to restore. Furthermore, since there is nothing to restore, how could you have had interpretations and applications that were longstanding as well as previously administered and consistent? See e.g. 34 C.F.R. 100.4 (d) (2); 45 C.F.R. 80.4 (d) (2). My contention is that you can not.

The legislation speaks to certain "recent decisions and opinions of the Supreme Court" that have brought about the need to *restore* Congressional intent. The decisions are unnamed because, I contend, they do not exist.

CORRECT TITLE

The "Findings of Congress" conform to the improper name of the bill. A more appropriate name would be the "Federal Government Expansion Act of 1985" or the "Big Brother Act of 1985" with appropriate "Findings of Congress" to follow which state in essence: "While we would like to merely erode the freedom that private colleges and universities now have in America, we view the Grove City decision as our opportunity to vastly expand the reach of the federal government into virtually every facet of the public and private sector."

The Trojan Horse would then be unmasked.

Parameters of Legislation

There is nothing in the bill which provides a businessman, farmer, individual, private school administrator or state or local elected official with guidance as to how far the reach of the federal government is into the public or private sector.

The preamble points the reader to a whole body of prior regulatory and administrative activities. The regulations of the various federal agencies that distribute federal dollars (over 25) are inconsistent as compared to each other. Furthermore, to look for guidance as to the interpretation of this law in the administrative policies of numerous people in various agencies during previous administrations will not provide a measure of certainty as to future enforcement; but will instead merely frustrate the researcher. How can an individual businessman or citizen begin to know how far, in any given situation, a particular federal bureaucrat or federal judge will go in interpreting the scope of federal jurisdiction into the public and private sector. It appears the proponents of H.R. 700 have attempted to incorporate by reference a massive volume of ill defined and inconsistent policies and practices which could never be reduced to writing for fear of creating chaos with the voters back home.

It is my contention that the potential scope of intervention by the federal government under the provisions of H. R. 700 is limited only by the ingenuity and innovativeness of an enterprising private attorney working hand in hand with a bureaucrat who wants to socialize the private sector in America, all in the confines of an activist federal judiciary.

The prospects for such a massive erosion of individual liberty could never be foisted upon the American public if the truth were known.

WHERE'S THE BEEF?

The proponents want Congress to swallow their proposal as a minor bill which merely restores the law to what it was before Grove City. In truth, the bill represents a massive expansion of federal regulatory authority without any showing by the sponsors of a reason for such expansion.

Before we eradicate the remaining distinctions between the public and private sector, I would urge the sponsors to document their demonstrated need for such legislation.

Returning to my earlier statements, if the sponsors wish to accomplish the expansion of Title IX (or even the other three civil rights statutes) to institution-wide coverage this can be accomplished with a legislative initiative that merely adds the word "institution" to "program or activity" that is presently in the law.

The unwillingness to do this in 1984 and the apparent lack of desire to do this in 1985 clearly demonstrates that the worst fears of the opponents to H. R. 700 are justified in their contention that this bill will vastly expand the reach of the federal government into the lives of every American - all without any showing by the sponsors of a demonstrated need for such an erosion of freedom. Plainly speaking, there is no justification for such an expansion of federal power.

In the commercial they ask "Where's the beef?"

To the sponsors I would ask "Where's the need?"

1984 AND 1985

The "Civil Rights Act of 1984" used the term "recipient" to bring virtually every business entity and individual within the scope of these four statutes. These are the same mentioned in H. R. 700 - Title IX, Title VI, Section 504 and the Age Discrimination Act. Almost everyone could be included within the phrase "recipient" of federal financial assistance.

On the surface, the 1985 legislation would appear to be more narrow than its 1984 counterpart, because it does not change the definition of "recipient." A closer analysis of the bill I believe will clearly show that H. R. 700 is in fact broader in its application of these four statutes.

H. R. 700 carries a new definition of the term "program or activity" to include "all of the operations" of a state or local agency, corporation, private organization, et. al. "any part of which is extended federal financial assistance" (Emphasis supplied).

Thus all of a corporation's operations, including those that are non-educational, would now be covered by all four statutes merely because one part was "extended federal financial assistance". Prior to Grove City, none of a corporation's non-educational operations let alone all of the operations were covered by Title IX merely because the educational operations received federal funds.

Here is but one more example of how the bill does not merely restore the law to its pre-Grove City status but instead vastly expands the reach of the federal government into the private sector.

An additional note concerning a corporation involves those situations where a business received federal financial assistance for a non-educational operation. In this case the educational operation was not covered under the provisions of Title IX. *Cf*. *Simpson* v. *Reynolds Metals Co.*, 629 F.2d 1226 (7th Cir. 1980). Under the provisions of H. R. 700, all of the operations of the corporation would be covered.

Furthermore, by effectively incorporating by reference the entire body of Administration and regulatory practices of the more than twenty-five (25) federal agencies that distribute federal financial assistance, H. R. 700 clearly becomes more expansive in its reach than its counterpart, the "Civil Rights Act of 1984."

One can therefore logically assume that the concerns raised by the various business groups, trade associations, and farm organizations remain. As stated earlier such concerns would be alleviated if the sponsors would merely draft a bill which conforms to the rhetoric accompanying it.

WHEN IN DOUBT - EXPAND!

The nebulous and confusing manner, in which the bill is drafted, coupled with the lack of specificity surrounding what prior Administrative regulations and practices will be relied on at any given point in time, provide little comfort to a private businessman seeking to know whether or not he is covered by a federal civil rights statute.

The lack of specificity will permit energetic bureaucrats and federal courts with the opportunity to expand the civil rights laws into the unchartered waters of freedom that, at the present time, remain in America.

How is a wholesaler in Lansing, Michigan; or a manager of an assembly plant in New Castle, Indiana; or a retailer in Springfield, Illinois to know whether or not his actions and business dealings will bring him under the thumb of the federal government? This lack of notice and certainty concerning coverage which a businessman is entitled to, in my opinion, by itself makes the bill fatally flawed.

ULTIMATE BENEFICIARIES

Most of the regulations exclude the ultimate beneficiary from the coverage of the civil rights statutes. See e.g. 7 C.F.R. 15 B(Department of Agriculture Section 504 regulation). As mentioned earlier, the regulations of the various agencies are effectively incorporated by reference. However, where those regulations are inconsistent with statutory provisions, the regulations will go by the wayside.

Therefore, since there is no exclusion for an ultimate beneficiary in the statute, is a businessman that receives a loan from the Small Business Administration covered; or a farmer that received a crop subsidy?

It appears quite logical that, absent an exclusion, grocery stores and supermarkets participating in the Food Stamp Program are covered by virtue of their involvement in this program. This coverage did not exist before Grove City and is merely one more example of how H. R. 700 expands the reach of the federal government rather than to merely serve as a vehicle to restore us to pre-Grove City standards.

This coverage of ultimate beneficiaries by the civil rights laws, involves individual recipients as well. Therefore, every social security recipient, everyone who is receiving a federal pension, everyone who is involved in a mortgage that is federally insured, as well as anyone who can be perceived as drinking at the federal trough (howbeit receiving only one dollar) will be covered. Such an expansion of federal authority represents our legislative process at its worst.

PROLIFERATION OF LITIGATION

As pointed out earlier, there is no reason to believe that bureaucrats and judges will use any level of common sense or restraint in enforcing the ambiguous and nebulous provisions of H. R. 700. To use the blank check approach with regard to federal legislation, rather than the carefully crafted and narrowly drawn approach represents a dereliction of duty on the part of legislators.

However, even if the legislation were to be redrafted in very narrow terms, there is another danger lurking around the corner for the private business and farmer, along with those involved in the state and local government arena. The danger involves private law suits. Every one of the four statutes involved allows for private causes of action against those who receive federal funds (and quite possibly those doing business with recipients of federal aid!)

Since these private causes of action permit the award of attorney fees to successful lawyers, an additional expense for those involved in the private sector becomes a very real possibility as a plaintiff seeks to have the businessman or farmer comply with the anti-discrimination statutes. Furthermore, even if the plaintiff is unsuccessful and the businessman is vindicated, he has still been subjected to the needless expense of defending himself against a lawsuit and has incurred a loss of profits as well as time.

How sad that the private sector is even facing by way of H. R. 700 the possibility of incurring enormous expenses to defend themselves against "their" government.

THE ICING ON THE CAKE

Based upon the foregoing analysis, the public and private sector in America faces quite possibly the most serious threat to the fragile boundary between the ever expanding federal government that seems to have an insatiable appetite for control; and the free enterprise system and the desire of our citizenry to be free that we have ever faced.

However, the worst is yet to come! In an effort to insure that no one escaped the reach of the federal bureaucracy and federal courts, the drafters of H. R. 700 in the final subsection defining program or activities added within the sweeping coverage of the bill "any other entity determined" to be covered "in a manner consistent with the coverage provided with respect to the entities described" in the preceeding three paragraphs.

The preceeding three paragraphs speak to the coverage of state and local governments; a university or system of higher education; a local educational agency involving elementary and secondary schools or other school system; and a corporation, partnership or other private organization. These three paragraphs appear to include basically everyone. However, with the inclusion of this language it appears the proponents of the bill wanted to be sure no one escaped the federal grasp.

The words "in a manner consistent with" do not help develop a readily definable paramenter to cut off the reach of the federal government. Instead they do just the opposite. For example, if a student who receives a federally insured student loan or grant directly from the government triggers coverage for the entire college or university he attends, isn't it logical that a social security recipient will trigger coverage for each and every business establishment he does business with? I believe so.

UNEQUAL TREATMENT OF ENTITIES

In an effort to minimize their opposition it appears that the proponents of the bill offered a less expansive intrusion into the affairs of state and local governments than they did for private businesses; the college or university; or for the individual farmer or citizen. The proponents did this by targeting only the agency or department of government that actually receives the federal aid.

Since there is no explanation for this two or three tiered approach to coverage by the federal government, one can only assume that there is no rationale except to eliminate some of the opposition.

COSTS OF COVERAGE

The paperwork requirements for a business that would be mandated under these four statutes would extend not just to the operation receiving the federal funds, but to all operations of the business.

All of the operations of a business entity would be subject to compliance reviews by each and every funding agency. The cost of complying with the mountain of red tape that would be required would be passed on to the one who ultimately has to pay for all regulatory schemes - the consumer.

QUESTIONS WHICH DEMAND AN ANSWER

Permit me to list some areas that would quite possibly be affected by H. R. 700 if it were to become law. This will be done in the form of questions for which no adequate answers have yet been given or assurances that our fears are unfounded.

1. Will a farmer or rancher that receives federal price supports or crop insurance subsidies or disaster loans be covered under H. R. 700?

2. Will a Mom - and - Pop grocery store or supermarket be covered because they accepted food stamps?

3. Will a funeral home be covered because it accepts military burial benefits?

4. Will a retail outlet be covered because it accepts payment for goods or services from an individual who receives social security benefits?

5. Would a bank be covered because one of its affiliates received a federal grant?

6. Will a pharmacy be covered because it accepts medicare payments for prescriptions?

7. Will a company that sells materials or leases equipment to a federally funded project be covered?

8. Will a non-profit group such as a church or a charitable entity be covered merely because they are tax-exempt?

9. Will all vendors who do business with a state or local unit of government be covered?

10. Will a landlord be covered if he accepts a rent payment from a tenant who is receiving public assistance?

11. Will an airline company now be covered because it benefits from federally funded air traffic controllers?

12. Will a bookstore that does business with students who receive assistance in the form of federally insured student loans or grants be covered?

The list could go on and on. The important point to remember is that ther is no guarantee that each of these scenarios will not trigger coverage by the federal government.

AN UNEASY FUTURE

Notwithstanding the assurances of the proponents of H. R. 700 to the contrary, the nebulous and confusing language of H. R. 700 offers no certainty and little consolation to the farmers in Ames, Iowa; the assembly plant manager in Detroit, Michigan; the grocery store owner in Muncie, Indiana; or the pharmacist in Madison, Wisconsin that his worst fears will not come to pass as he is buried under an avalanche of federal paperwork and endless scrutiny by bureaucrats looking to feret out any suspected discrimination.

He will be guilty until proven innocent.

If the supporters of H. R. 700 wish to accomplish their stated goal, to overturn the second part of Grove City, then merely add the word "institution" to "program or activity" in Title IX. I would urge them to adopt my two proposed amendments mentioned earlier in this analysis as well. If they wish to deal with the other three statutes then I recommend that they look to S. 272 authored by Senator Dole as a starting point in this very important area and relegate H. R. 700 to the stack of bills that never were permitted to see the light of day, let alone the President's desk.

CONCLUSION

OVERKILL

The bill is the worst example of overkill in legislation I have ever seen.

Therre is no guidance in the way the bill is drafted for the courts, bureaucrats, attorneys or businessmen to determine what the exact scope of H. R. 700 really is.

This vacuum will be filled with the energetic efforts of enterprising bureaucrats, attorneys and an activist federal judiciary that has gladly accepted the opportunity to get into the legislative arena by developing novel approaches to issues presented to them.

This bill represents the most outrageous extension of Civil Rights Enforcement in the history of our country; all without any showing of a demonstrated need.

There is no justification the proponents have come up with for such an intrusion into the private and public sector.

Coupled with the lack of truthfulness to call this bill by a proper name in order to let the American people know the true ramifications, represents our legislative process at its worst.

In looking back on our most recent elections the American people very clearly said "We don't want more governmental control over our lives, we want less!" It can therefore be logically assumed that if the proponents of the bill followed the admonition of Abraham Lincoln to "Let the people know the facts and the country will be saved," that the country would be spared the horrendous impact of the Federal Government Extension Act of 1985 or the Big Brother Act of 1985" alias "the Civil Rights Restoration Act of 1985."

Thank you Mr. Chairman for giving me the opportunity to appear before the Joint Committee on this very important matter.

The CHAIRMAN. Would you support it if we did that?

Mr. MILLER. If you were to do what Claudine Schneider said and go——

The CHAIRMAN. I said, if we did what you just got through saying, would you be a supporter of it if those changes were made?

Mr. MILLER. If those changes were made, along with the two amendments that I did not speak to listed in my text, yes, I would be an ardent support of it, absolutely.

In my statement, Congressman Hawkins, if that were to happen, I would be one of your most ardent supporters, yes, sir.

The CHAIRMAN. If we agree that we have not changed the definition of recipient, would you still support it?

Mr. MILLER. No, sir, because "program or activity" so been so expanded that it swallows up the old definition of recipient, in my opinion. If not, however, it is confusing enough to bring in that whole body of previous regulatory practices that nobody really is put on notice as to what is not and what is covered.

The CHAIRMAN. Well, you haven't kept up with the bill, I can see that.

Mr. HAYES. Miss McCracken.

Mrs. MCCRACKEN. Mr. Chairman and members of this joint committee, I appreciate the invitation to appear before you at these hearings and welcome the opportunity to present the views of the Illinois Small Businessmen's Association, founded in 1938, with women on its board of directors from its very inception.

We are opposed to House bill 700, the Civil Rights Restoration Act of 1985, because it will smother the men and women who operate small businesses, dependent as they are on francise arrangements, as suppiers of goods and services to large businesses as well as individuals and small customers. It will make them especially vulnerable to Federal supervision, regulation and intervention.

It will be most difficult for them to cope with the ensuing costly and burdensome administrative agency compliance reviews and massive paperwork, all because somewhere along the line someone received a dollar's worth of Federal assistance.

We also oppose House bill 700 for its innumerable and carefully drafted loopholes. It would become a veritable playground for the army of civil rights lawyers that would suddenly appear to file frivolous lawsuits against any individual and public or private entity in the country, all in pursuit of a creative and innovative understanding of equal rights.

It is ironic that in view of the last two elections, where the citizens of this Nation voted overwhelmingly to reduce Federal interference in their lives, this joint committee is considering a bill in which the Federal Government's authority and its bureaucracy is stretched to its absolute limits—and beyond.

It is not difficult to envision the enormous and costly bureaucracy the enactment of this bill would create. We have become a Nation of parallel governments—one the elected legislature, and the other, the unelected bureaucracy, with the unelected remaining firmly entrenched in government long after the elected officials leave office. It is unfortunate that while they are in office they are unable, or unwilling, to curb the bureaucratic abuses and excesses of power inflicted on a long-suffering people.

A few generations ago our legislators passed laws that forced some men to work for others. It was called slavery. Today, we have laws that force some men to provide jobs for others. This, too, is slavery. The laws are the same; only the victims have changed.

When legislators tinker with civil rights, it always leads to a master-slave relationship for some, with government holding the whip. It would be best for everyone if government confined itself to the only legitimate function of government—that of instituting a judicial system that provides justice when the life, liberty or property of any individual is violated by the initiation of force, fraud or violence.

Thank you.

[The prepared statement of Anne McCracken follows:]

PREPARED STATEMENT OF ANNE MCCRACKEN, ILLINOIS SMALL BUSINESSMEN'S ASSOCIATION

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WBBM NEWSRADIO 78

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EDITORIAL REPLY

WBBM Radio welcomes editorial replies by qualified spokesmen for the purpose of further stimulating public discussion and maintaining fairness and balance in the presentation of public issues. If you missed the broadcast of this reply to a WBBM Radio editorial, we hope you will read it. Your comments are always most welcome.

Gregg L. Peterson, Vice President, CBS Radio Division
General Manager, WBBM Radio

SUBJECT: BUSINESS SERIES
R84-95

SPOKESMAN: Anne McCracken, member of the Small Business Men's Association

BROADCAST: August 8, 1984
2:42, 7:26 AM
12:38, 6:55, 8:54 PM

(Recently, WBBM ran an eight-part editorial series on Illinois' business climate. Here with a differing view is Anne McCracken, a member of the Small Business Men's Association.)

In preparing their editorial on business, WBBM talked with small business, big business, manufacturers, city and state business groups, labor leaders, business journalists, university professors and city and state officials. They ignored the most important person in the equation between business and government, the customer.

Businesses come and go, governments come and go, but as long as there are people, there will be trade between buyer and seller, each trading something he doesn't want for something he wants. All government can do is provide justice when force, fraud or violence are used to violate another's right to life, liberty and property.

Some of those WBBM talked with know little about business because taxpayers are forced to pay their salaries, even though they don't need or approve of the services they provide.

Others know enough about business to find secure jobs in government, sheltered from competition and problems of the business world. They acquire political power to spend our tax dollars to subsidize their political friends who, in turn, help them stay in power. A vicious circle that hurts the customer by creating unfair competition, monopolies and unnecessary shortages.

Every man, woman and child is a customer, but not all of them are able to produce the many goods and services they all need to stay alive. Only a free market geared to people, not politicians, can satisfy their needs not only in Illinois, but all over the world.

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Gregg L. Peterson, Vice President, CBS Radio Division
General Manager, WBBM Radio

SUBJECT: DISCRIMINATION I
R84-22
SPOKESMAN: Anne McCracken, Coalition for a Voluntary Society
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The more things change, the more they stay the same. A few generations ago, we had laws that forced some men to work for others — it was called slavery. Today, we have laws that force some men to provide jobs for others. This too is slavery. The laws are the same, only the victims have changed.

It may be legal to sacrifice some for the benefit of others, but it cannot be considered ethical. When the individual is denied, by law, his natural right to choose his associates, it leads to a master slave relationship, with the politicians holding the whip.

WBBM has joined with those who cling to the illusion that civil rights laws and quota systems are good for minorities. In reality, they've done nothing to help the poor. They have only increased the power of government to intrude into our thoughts and our lives. Most tragic of all, they've hurt the blacks and women with ability. They've had to struggle and work twice as hard to get near the top of their professions, only to face discrimination by the dominant white, male-oriented politicians, educators and clergy, who dismiss their competition as due to the quota system and not talent.

The only people qualified to govern the kind of society planned by civil rights activists are burglars and prostitutes. They're the only people who don't discriminate.

Mr. Hayes. Mr. Clarke.

Mr. Clarke. Mr. Chairman and members of the committees, I thank you for this opportunity to present the views of small business concerning the proposed Civil Rights Restoration Act of 1985.

My name is Edwin R. Clarke II. After a career with large industrial corporations, I am now a small business operator who is learning at first hand how much recordkeeping and reporting, not to mention paying, Federal and State governments require of even the smallest businesses. Within the last year I have been a delegate to the 1984 Illinois Conference on Small Business in Springfield, IL, and an observer at the 1984 Small Business National Issues Conference in Washington, DC. At both conferences, one State and one national, the burdens of payroll taxes and government regulation were high on the list of problems which small businessmen believe should be corrected.

Recently I accepted the presidency of the American Federation of Small Business, an organization originally founded in 1938, with a present membership of 25,000 independent businessmen, headquartered here in Chicago, and dedicated to assisting its members to operate successfully in accordance with free enterprise principles in the competitive and regulated atmosphere of our times.

My remarks today will attempt to convey to the committees the grave concern of small business operators at what we understand to be the new expansive provisions of the proposed Civil Rights Act of 1985.

The State of Small Business: A Report to the President, transmitted to the Congress March 1984, defines small businesses as those manufacturing enterprises with 500 or fewer employees and those service enterprises with 100 or fewer employees. The report states that there were in this country in 1982—and I won't give the exact numbers—approximately 5 million such enterprises. Retain trade and service enterprises numbered about 2,300,000, which was more than 52 percent of the total. The report states that most business bankruptcies occur among small businesses.

In Illinois, in 1984, small businesses numbered more than 240,000 and accounted for the greatest number of employment opportunities, according to the Governor's Small Business Advisory Commission.

Small businesses typically cannot afford in-house administrative staff specialists for each of the variety of specialized types of responsibilities imposed by government. But outside services, consulting and legal, are even more expensive. Small business as a result is always worrying about how to fulfill the government-imposed regulatory requirements and about the heavy administrative expenses involved which continuously push toward bankruptcy. The Civil Rights Restoration Act of 1985 now presents new worry. It seems to open the door in several new areas to the likelihood of charges of discrimination arising out of the receipt indirectly by small business operators of federally-disbursed moneys—for example, Social Security, food stamps, housing, and agricultural subsidization payments, and so forth.

Small business is alarmed at the uncertainty of section 2(2) which says "legislative action is necessary to restore the prior consistent and longstanding executive branch interpretation * * * of those laws as previously administered."

All operations of a small business possibly subjected to prior executive branch interpretation of the civil rights laws? Small business can only see the heavy hand of bureaucracy descending to impose some new rules never previously known or imagined. Shouldn't Congress be able to say with specificity what the rules are? But, then, why should the small business community have any new rules imposed? The *Grove City* case, which gives rise to the proposed new law, involved an educational institution, not small business.

Also, the proposed new law omits the exclusion of ultimate beneficiaries which is included in the regulations now. This new exposure of the small business operator has ominous implications as the new law would make possible charging the indirect recipient of federally disbursed moneys with discrimination.

Subcontractors, landlords, grocers, service station operators, funeral directors, pharmacists, these are only some of the small business operators who indirectly receive federally disbursed moneys and who were previously covered by the ultimate beneficiary exclusion that will no longer protect them.

Small business will be forced by the proposed law to increase expenses in a defensive administrative effort to gain understanding of the new liabilities embodied in the vaguely-stated new rules and, without doubt, to adopt some new operational procedures to ensure compliance. In addition, small business will expect an increase in taxes to pay for the additional regulatory activity of the Federal Government. In other words, small business is going to get it in the neck from two directions.

Small business respectfully requests the committees not to impose the new liabilities contained in H.R. 700. Laws that hurt small business will hurt small business' ability to create new jobs, which are the real hope for helping minorities, women, the aging and the handicapped, and the true objective of the laws that will be amended by the Civil Rights Restoration Act of 1985.

Again, thank you very much for the privilege of being here.

Mr. **Hayes**. Thank you.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Thank you, Mr. Chairman.

I would like to direct my question to Mr. Miller and Mr. Clarke, if I could. As we all know, last year's bill attempted to solve the problems caused by the *Grove City* case by redefining recipient. This year's bill, on the other hand, attempts to get at the Grove City problem by defining what programs or activities the Federal Government is involved in trigger liability.

Which is broader, the recipient approach or the program or activity approach?

Mr. **Miller**. In my opinion, after reading this and after following the bill a long time and reading the commentaries by other legal scholars, Congressman, I would say that, without a doubt, the definition of program or activity is much broader. Because under present law, right now, if a corporation gets a Federal grant that is involved with the educational part of the corporation, that is the only thing that is covered. Never was it intended to include all the entire corporation. Under this, by having the law say program or activity includes all the operations of an entity, any part of which is extended Federal financial assistance, you have taken in, in my opinion, the entire definition of recipient. By the time you add that together with the closing phrase that it covers any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraphs 1, 2 and 3, and add to that the whole previous body of regulatory law, I think without a doubt the definition of program or activity is much broader than recipient.

Mr. SENSENBRENNER. So it is your opinion that this bill is far more expansive than last year's bill?

Mr. MILLER. That is correct.

Mr. SENSENBRENNER. Mr. Clarke.

Mr. CLARKE. I would certainly agree with Mr. Miller, Mr. Sensenbrenner. I really am not a lawyer so I don't speak with quite the detailed knowledge that he does, but certainly it seems to me that's correct.

Mr. SENSENBRENNER. Last year's bill got shot down because it was too expansive. If this one is even more expansive, I think the future is quite bleak.

Thank you.

Mr. HAYES. Mr. Hawkins.

The CHAIRMAN. Mrs. McCracken, you said something about today we have laws that force some people to provide jobs for others. Would you amplify on that?

Mrs. MCCRACKEN. The quota system would indicate that some men are forced to provide jobs for others.

The CHAIRMAN. How does the quota system get into this?

Mrs. MCCRACKEN. Well, one does not have the free choices as to whom one hires to do whatever one chooses to have done in one's business. One is forced by law to use an artificial means of selecting one's employees.

The CHAIRMAN. Are you saying that those of us who sponsor H.R. 700, actually are saying that because you have received Federal assistance, that in the hiring you can hire anyone you want, but you cannot use such money to discriminate against certain taxpayers, namely, the disabled or the aged or on the basis of race or sex?

Mrs. MCCRACKEN. We have had artificial quota systems which intrude, which are——

The CHAIRMAN. We're not talking about quotas now.

Mrs. MCCRACKEN. But with this new bill, with any third party interference between the voluntary activities of employer and employee certainly never should be tolerated. It is an interference in the voluntary activities and economic activities of consenting adults.

Third party interference of any sort is immoral. This new House bill 700 will intrude even further because somewhere along the line someone who—I wouldn't want to use the word tainted—but who has received Federal assistance is going to be drawn into this noose, which is going to intrude into those voluntary affairs even more. It is certainly not to the advantage of the individuals.

The CHAIRMAN. Can't they just simply turn down Federal assistance.

Mrs. McCracken. I, in my business, would never know if I'm dealing with someone who has received Federal assistance, which in turn brings me into this noose which will tighten the relationships between buyer and seller, producer and customer, and the government is the one that has the noose around the voluntary activities of individuals. This is certainly going to be very detrimental to the small business men and women who have a difficult enough time starting a business, staying in business, meeting all the redtape that is required, the intrusion by others when they can barely keep themselves alive.

Most new products, most new ideas, most new inventions, come from small business men and women. They are the heart——

The Chairman. Well, I can't agree with you on most of what you have said.

Mrs. McCracken. But anything that interferes—Most of them barely survive from payroll to payroll, must less have to worry about complying with additional regulations. This will no doubt bring far additional regulation, interference, intrusion, paperwork, which is very expensive. Small business cannot afford it. A large business can absorb some of this somewhere along the line. But this will be the ruination of small business, in my opinion.

The Chairman. Well, that was said about the Civil Rights Act of 1964, also, and about every other civil rights act, so I am not too much persuaded by that. But I am just trying to see whether or not you agree with the principle involved in this bill. Women, the aged, minorities, the handicapped, all of these people are customers of small business, so we're talking about your customers as well. They are also taxpayers and they contribute tax dollars to the Government.

Now, we are simply saying that if you want to use that money from the taxpayers, then you can't turn around and discriminate against those taxpayers. It seems to me that is the fundamental notion. I was just simply asking if you disagree with that. Obviously it's going to require in some instances recordkeeping, I agree with that. But you keep records for the IRS and I don't think you disagree that you have got to do that, also.

Mrs. McCracken. Well, keeping records that involve dollars and cents is very simple. They are factual things. You add a column of figures and subtract or whatever. When you're dealing with human nature, that's a very different area to try to legislate. The relationships between individuals, discrimination, I think the man that marries a redheaded woman certainly is discriminating against brunettes and blondes. Discrimination is part of everyone's choices. We elect our officials and are discriminating against those we do not elect. We consider these people are going to do more for us. So we are discriminating every day of our lives.

The question is, is it a legitimate function of government to interfere in voluntary activities of individuals, whether it's in the area of economics or social affairs or personal affairs.

The Chairman. Well, apparently because of recordkeeping, and because you fear intrusion, you would apparently support the idea of discriminating against taxpayers whose money is being used to discriminate against those individuals. That's the fundamental question that we're trying to answer, and if there is anything that seems basic to our way of life or to the Constitution, it seems to be the freedom of an individual not to be discriminated against.

Mrs. McCRACKEN. I find it very difficult——

The CHAIRMAN. You seem to shove that off and get back to your recordkeeping and the other things——

Mrs. McCRACKEN. I find it very difficult to believe that women, minorities, for whatever reason they're considered minorities, whether they are handicapped or whatever color or race, I find it very difficult to think that any individual is inferior. Passing legislation to equalize him is to say to him, "You are inferior, obviously, you poor soul. We're going to have to pass laws to elevate you." My objection to all civil rights laws is they are aimed at the group and they ignore the individual. There is no way you can say all blacks or all handicapped or all women or all older people are the same. Individuals are as different as snowflakes. There is no way you can say these are all inferior and we must pass laws to raise them up to our level. I think this is a totally hateful look at individuals. To label them with group characteristics is very unfortunate. I think it gives those who think they can pass laws to elevate these people, it must give them a feeling of superiority.

The CHAIRMAN. Well, OK. You've gone beyond me. I assure you, that's not my thought as being one of the co-sponsors. I agree with you, that we judge people on an individual basis. That is what we want to do.

Mrs. McCRACKEN. I find that many of my friends who are minority members have to work twice as hard, because say, you know, "She came in under the civil rights act" or whatever. I, as a woman, strongly object to being considered inferior and I don't want laws passed to raise me a little above my lowly status. I feel I should be judged as an individual, whether I have the ability to do something or whether I don't.

I should have the right to succeed or fail on my own merits. I think civil rights laws have hurt me as a woman and have hurt many of my friends, simply because we are tolerated in the business world. Well, you know, we have to have a token woman. I resent that. I feel I have the ability to compete, and any laws that have prevented me from competing were passed. They were artificial barriers to my competition.

If we didn't have laws that prevented me from working overtime or lifting heavy weights, whatever, laws have held me back, if we have no laws holding me back, I think I could compete just as a man can. I feel that I personally have been held back because of these laws that treat me as an inferior. I am not an inferior and I don't need a law to say, "Well, my good woman, we'll help you and we'll raise your status a little closer to ours."

The CHAIRMAN. Thank you.

Mrs. McCRACKEN. No offense.

The CHAIRMAN. I will stipulate that you're not inferior.

Mrs. McCRACKEN. Thank you.

Mr. HAYES. Just let me say that, having been one who is the grandson of a slave, we needed the law to rescue us from slavery.

Mrs. McCRACKEN. No, but the laws that made you slaves were passed by our legislature. These were laws that—at one time in our country our legislators passed laws that made it legal to own slaves. I object to that law. This is my objection to the slavery laws. They were legitimatized by our Government. It was legal to own slaves.

Mr. **Hayes**. In order to change it, you had to change the law, too, didn't you?

Mrs. **McCracken**. Well, the law certainly, fortunately—the law was so bad it couldn't have lasted.

Mr. **Hayes**. I don't care to really debate the point, but I certainly don't understand how you can draw the analogy between slavery and providing jobs for others. This is a quite different kind of situation. You said this is slavery, too. You say the laws are the same; only the victims have changed.

Mrs. **McCracken**. Yes.

Mr. **Hayes**. I don't think you understand really what slavery meant.

Mrs. **McCracken**. Perhaps I'm looking from a different viewpoint.

Mr. **Hayes**. You have to live in the skin to understand it.

Mrs. **McCracken**. I, as a woman, too, have felt discriminated against in my personal and business life, too, so I understand what it means to be discriminated against, believe me.

Mr. **Hayes**. All right.

I want to ask Mr. Miller a question. I noticed you are the executive director of an organization entitled Citizens Concerned for the Constitution.

Mr. **Miller**. Yes, sir.

Mr. **Hayes**. I think you're talking about the Constitution of the United States primarily, aren't you?

Mr. **Miller**. That and our State constitution. The Indiana organization has helped other States get going, but primarily the U.S. Constitution conforms with the States, too.

Mr. **Hayes**. Do you think all tenets of the Constitution should apply evenly to everyone?

Mr. **Miller**. I have no problem with equal protection under the law for anyone, that's correct. That's why I have a problem with that section of the law that deals with State and local governments differently than private business.

Mr. **Hayes**. That includes the right to go to school and get an education?

Mr. **Miller**. I have no problem with that at all.

Mr. **Hayes**. Without being discriminated against or deprived of the right to do it?

Mr. **Miller**. It goes much deeper than that. It goes to the right of the parents to choose the educational setting of their children. But I agree with that.

Mr. **Hayes**. OK. I just wanted to make clear I understood the direction you were going.

Mr. **Miller**. Can I make a comment, Congressman Hawkins, to your question, because I think it's important. If we take your bill, sir, and if I hear what you're saying we ought to do, I think we can do it, but not with the language you've got here.

What I heard you say is that any business that accepts Federal funds ought to be covered. That's where we're wanting to head, right? I believe that if you take the approach that I came up with and just add institution-wide coverage that you will accomplish that. But here's my point. Your very bill, sir, says up in the start of it—you're talking about education matters, Title IX. We have already heard in the other panel that you support *Grove City College* and other institutions being covered because a student gets Federal aid for himself and he carries that into the institution, and then the whole institution is covered.

If you follow that logic and read your bill, sir, it covers also any other entity determined in a manner consistent with the coverage mentioned earlier. Then it is my opinion, based upon the language in your bill, that you're doing something that you don't want done, that what you're doing is carrying somebody on Social Security benefits, veterans' benefits, Medicare, Medicaid, or anything else—because my dad happens to be a disabled vet, was injured in World War II. My dad gets money from the government every month. If I read this correctly, everything my dad does, be it at his local church, be it in a business entity, if you follow the same analogy based upon the language of the bill, that indirect aid to a student will trigger coverage for the college, then logically won't everything my dad does with his veterans' amount trigger coverage for private business? I don't think that's what you want to do.

The CHAIRMAN. Well, you don't have to tell me what I want to do. The bill is not mine alone. There are 175 cosponsors—I want you to know that—both Republicans and Democrats. So don't personalize it as if it is something that I want to do or don't want to do.

I merely wanted to inform you that after last year's problem with the bill, based on the definition of recipient, that we did not touch it this time. Consequently, the issue of who is the recipient and who is not, is not really relevant to the bill this year because we shifted back the position and that upset a lot of the opponents, because they wanted the same type of confused situation that we had last time.

I was only impressing upon you the fact that there was a good reason why we shifted to the new approach, as opposed to the recipient definition because that brought in all of the hypothetical problems, all of the scare tactics, that you brought in today. That's why I say I don't think you kept up with the legislative background of the bill as it was introduced this year. I say that quite without prejudice because I think you still are laboring under the misapprehension that we are trying to cover a lot of recipients who were not covered last time, or who were not covered prior to *Grove City*. That is not the intent at all. I just didn't want the intent to be confused as to what we were trying to do.

Now, we may disagree on the meaning of some of the language in the bill, but as to the intent, I just didn't want you to become confused that we are intending to do some things that you claim we are doing. The only basic notion is that those who dip their hands in the public treasury should not object if a little democracy sticks to their fingers. That's all we want to do.

[Applause.]

Mr. MILLER. I have no objection, Congressman. I just think we can choose better language.

The **Chairman**. Well, we will certainly take your suggestions to heart.

Mr. **Miller**. Thank you, sir.

The **Chairman**. And we will certainly deal with them as best we can.

Mr. **Miller**. Thank you. I appreciate that.

Mr. **Hayes**. I want to thank the members of the panel we have just heard. Your positions have been quite well understood and we will take them under advisement.

Mr. **Miller**. Thank you, Mr. Chairman.

Mr. **Hayes**. I would like to combine the final two panels for today's hearing in the interest of time, because some of our people have plane schedules they would like to make.

I would like for Mr. Donati to come forward, an attorney from Memphis, TN; Mr. Bonnyman, an attorney from Nashville, TN; Marca Bristo, president of Access Living; Mr. Caruso, general counsel for the leadership council for Metropolitan Open Communities; and Mr. Ken Williams, Access Living. Would you all please come forward.

Mr. **Sensenbrenner**. You will notice that the problems of access here exist, even though this is a Federal building.

Mr. **Hayes**. Mr. Donati.

STATEMENT OF DONALD A. DONATI, ESQ., ATTORNEY, MEMPHIS, TN; GORDON BONNYMAN, ESQ., STAFF ATTORNEY, LEGAL SERVICES OF MIDDLE TENNESSEE; MARCA BRISTO, EXECUTIVE DIRECTOR, ACCESS LIVING; F. WILLIS CARUSO, GENERAL COUNSEL, LEADERSHIP COUNCIL FOR METROPOLITAN OPEN COMMUNITIES; AND KENNETH WILLIAMS, HOUSING COORDINATOR, ACCESS LIVING, A PANEL

Mr. **Donati**. Mr. Chairman, my name is Donald Donati. I am a private lawyer from Memphis, TN. I want to thank the committee for this opportunity to address you about the implications of the *Grove City College* case, as well as the proposed amendments thereto.

It is my opinion that the *Grove City* case, coupled with interpretations by the Supreme Court, has an ominous effect on title VI as well as section 504 and the age discrimination amendments.

My particular involvement in this area has been in the area of health care delivery and specifically with respect to title VI. During the past 10 years I have been practicing law in Memphis, and Memphis is a rather strange place, typically southern. Memphis had a history of expressed segregated schools, segregated health care facilities. With the passage of the Civil Rights Act of 1964 many vestiges of that segregated system remained, especially in the health care delivery area.

I had occasion, with the passage of title VI and the private right of action under title VI, to be involved in multiple litigation to desegregate the health care system in Memphis. I think two examples of cases that we handled can point out to you why it is necessary to restore institution-wide coverage to title VI and the other acts.

One specifically involved a 16-year-old black girl who was taken to an emergency room in a county adjacent to Shelby County, a county that is 60-percent black. She was taken to the hospital in a semiconscious state. The hospital attendant assigned to the emergency room claimed there was not a physician on duty and she could not be admitted. She fortunately obtained care by an ambulance and was taken into Memphis. The family came to me for representation and we learned that this facility was receiving Medicare funds and had received a small Hill-Burton grant to build inpatient hospital beds.

If the narrow *Grove City* interpretation of program and activity had applied in that case, there would not have been jurisdiction under title VI to file an administrative complaint or to bring a private right of action. The reason would have been that she was neither a Medicare recipient nor was there discrimination in the inpatient beds that were built with Hill-Burton funds. Without the institutionwide interpretation, that facility could have continued to discriminate in admissions in the emergency room at that facility.

We, fortunately, obtained a consent decree with the hospital for meaningful relief for this individual, as well as the class she represented, which included an emergency room physician on duty 24 hours a day. They hired two black physicians. They opened up institutional agreements with primary health care clinics, where most of the primary health care that the minorities in the area were receiving. They also hired minority nurses. To this day, that facility is admitting minority children and adults in the emergency room. That, to me, illustrates a good example of why program-wide or institution-wide coverage is needed for private corporations.

Another illustration of a case that we filed back in 1980, which is still being litigated, involves the area of long-term health care services or nursing home service in Memphis. There existed then, and to a certain extent there does today, a dual system of health care which is virtually impenetrable for elderly blacks in the Memphis area. In 1977 nearly 75 percent of all Medicaid eligible population in Memphis were black. However, in 1977, less than 8 percent of the Medicaid recipients in nursing homes were black. While 75 percent of the eligible Medicaid recipients were black, only 8 percent were gaining access to the nursing homes.

This shockingly low percentage is directly the consequence of the history of racial segregation in the Memphis area. We found that nursing homes were intentionally denying access to facilities as well as unintentionally some of their policies had lated boarding homes. The county health department, in effect, was placing white elderly in need of nursing home care in nursing homes, and black elderly in need of nursing home care in boarding homes.

If the narrow interpretation of the *Grove City* decision would have existed then—there was no direct funds being received for payment of the salaries of the social workers at the Department of Human Services, nor were the individuals in need of nursing home care part of any program or activity of the Department of Human Services—there was no way in which the Department of Human Services could have been made to refer black elderly, just like white elderly, into qualified and licensed nursing homes. This, to me, is an example of why the "program and activity" definition must include subdivisions of State agencies. Of course, the Department of Human Services had received millions of dollars under title IV of the Social Security Act, but no direct funds for that particular activity.

These are just two real examples of why institution-wide coverage or program-wide coverage is necessary. It is my belief that H.R. 700 indeed restores institution-wide coverage to what I thought, and I believe most agencies believed, was the actual intent of Congress before.

Each of these situations that I mentioned involved administrative complaints with the Department of Health and Human Services and the Office of Civil Rights, and they took jurisdiction and did review these complaints as well.

From my perspective, it will be of great harm to my community if institutionwide coverage is not restored.

[The prepared statement of Don Donati follows:]

PREPARED STATEMENT OF DONALD A. DONATI, ESQ.

Mr. Chairman, I am Donald A. Donati, a lawyer in the private practice of law in Memphis, Tennessee. I want to thank this committee for the opportunity to address some of the issues created by the recent decision of the United States Supreme Court in Grove City College v. Bell, 104 S. Ct. 1211 (1984). The decision drastically limited the scope of coverage of Title IX of the Education Amendments of 1972. As you are well aware, this decision is not limited to Title IX. By clear implication found in the case of Consolidated Rail Corp. v. Darrone, 104 S. Ct. 1248 (1984), the Grove City reasoning, applies also to cases under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. It is my opinion that the Grove City decision can have a serious detrimental effect on each of these statutes. Without the prompt restoration of an appropriate and reasonable scope of coverage for each of these Acts, many of the gains made during the past 20 years in the area of civil rights will be lost. Such a loss has ominous implications for my own community which has only recently begun to shed the vestiges of a deeply-rooted and widely-practiced system of racial segregation.

The importance of restoration of an institution-wide scope of coverage can best be seen through an examination of a few real situations that have occurred in the area of delivery of health care in the Memphis area during the past ten years. I will describe two cases that, in my opinion, might not have been successful without institution-wide coverage.

The first situation involves emergency services in a small private, not-for-profit hospital in a county adjacent to Memphis. The second case involves a system of racial discrimination in long term health services in the Memphis area.

In order to understand the social context in which these cases arose, you must first understand the demographic and historic facts about the Memphis area. The population of Memphis is roughly 50% black and 50% white. In the surrounding metropolitan area, the percentages changes to roughly 60% white and 40% black. Prior to 1964, the three large not-for-profit, charitable hospitals were segregated as a matter of policy, custom and usage. Private hospitals did not grant staff privileges to black physicians nor did the local medical school allow minority enrollment. Black citizens obtained their hospital care from a black public hospital. There was also a public hospital for white indigents.

For many years in Shelby County prior to the passage of the Civil Rights Act, there existed a system of long term health care in which only one nursing home admitted blacks, a public facility commonly referred to as the "poor house". There were several all white facilities. Thus, in Shelby County there existed a dual system of short-term health care and long-term health care which was a product of a system of segregation that existed by virtue of state policy, but ingrained by custom and usage.

With the passage of Title VI of the Civil Rights Act, no person on the grounds of race was ever again to be excluded from participation in, be denied the benefits of, or be subjected to discrimination "under any program or activity receiving Federal Financial Assistance", 42 U.S.C. §2000(d). Since the Act provided a private right of action for a victim of discrimination, I was able to represent several individuals who have been victims of discrimination in health care delivery by institutions which have received federal financial assistance. As a result of passage of Title VI, some of the vestiges of the discriminatory system of health care have been eliminated in the Memphis area. A narrow interpretation of Title VI would reverse much of the progress made in the Memphis area in dismantling the discriminatory system of health care.

My first example involves a 16 year old black girl, who in September, 1977 was found unconscious at her home by neighbors. She was immediately taken by her aunt to a small 50 bed hospital in a county adjacent to Memphis. When she arrived in the emergency room, she was in a semi-conscious state. The hospital attendant assigned to the emergency room claimed that no doctors were available to treat the child and that she could not be admitted without a private physician admitting her. After attempting and failing to find local doctors to admit her, the child was taken by ambulance to a local Memphis hospital where she was diagnosed as having overdosed on drugs. After administering the medication to induce vomiting, she regained consciousness and was later discharged from the hospital. Fortunately, she did not suffer any permanent injury.

The hospital to which the child was first taken for treatment had received a small grant under the Hill-Burton Act, 42 U.S.C. §291 et seq in order to build in-patient hospital beds. In addition, the hospital was eligible for and did receive payment for care rendered to Medicare recipients. It was also clear that the hospital was turning away black patients in need of emergency care, yet was admitting similar white patients.

A lawsuit was filed on behalf of the girl and blacks in the hospital's service area. The Judge refused to dismiss the case and found that Title VI applied institution-wide. If the narrow Grove City interpretation of "program and activity" had applied in that case, my client would not have been entitled to any relief under Title VI because she was neither a Medicare recipient nor was she the victim of discrimination in the in-patient portions of the hospital. In effect, under the Grove City decision the hospital could have denied admission to all blacks except those that received Medicare.

After the District Judge refused to dismiss the case, the Defendant agreed to a Consent Decree which provided meaningful relief to my client as well as a class of blacks that she represented. The relief included firm assurances that the hospital would not discriminate in any manner with respect to any patient or prospective patient.

Further, the hospital developed a program to improve emergency services including the provision of emergency services irrespective of or without consideration for the financial resources or race of the applicant for emergency treatment. The hospital further agreed to provide for equal admission to the hospital and equal delivery of emergency room services to blacks and poor persons. The hospital agreed to recruit and hire at least 20% black professionals including physicians, nurses and technicians. The hospital agreed to provide staff privileges irrespective of race and to enter into transfer agreements with local primary health care clinics which had provided most of the primary health care to minorities. The agreement allowed for admission to the hospital for patients of the clinics. As a result of Title VI and the institution-wide coverage, the hospital's emergency room is now available to all the area citizens irrespective of race.

This case is an excellent illustration of the need for institution-wide coverage under Title VI. The coverage provision proposed in H.R. 700 clearly and appropriately defines the term "program and activity". A corporation or other private organization, such as the hospital in this case, and all of the operations would be covered under the Act. This type of coverage is important in assuring equal access to private health care facilities.

The next case illustrates the need to include in the definition of program and activities all the operations of agencies of the state. This is particularly important where it is impossible to trace federal financial assistance directly to low-level state officials who are engaging in discrimination.

In the area of long-term health care, the dual system of health care was particulary insidious and virtually impenetrable by blacks. In 1977, nearly 75% of the Medicaid eligible population in Memphis was black, however, less than 8% of the Medicaid recipients in nursing homes were black. This shockingly low percentage is a direct consequence of racial segregation in the area of long term health care. We found that some nursing homes knowingly denied access to the facilities to black patients by maintaining practices which perpetuate historic, intentional discrimination. Some of the discriminatory policies and practices included the failure to utilize referral sources in the manner which assured equal access to blacks, giving preferential treatment to admission of white patients, denying admission to persons who were not patients of a physician with staff privileges, failing to disseminate information of the general public concerning availability of the facilities without regard to race as well as simply denying admission to black patients. Another primary case for the discriminatory treatment was the operation of the county welfare department, a subdivision of the State Department of Human Services.

Since the black elderly were prevented from gaining access to nursing homes, they were relegated to inferior, unlicensed and unregulated boarding homes for their care. The county Department of Human Services and its workers knowingly failed to deliver social services to the black elderly when placement was required in a nursing home. In essence, the county welfare workers refused or failed to effect placement of blacks in nursing homes and instead routinely referred them to the inferior, racially segregated boarding homes, while elderly whites were placed in the appropriate setting of a nursing home.

We filed suit on behalf of all black elderly in Shelby County against the State Department of Human Services, the State Department of Public Health, and 12 private nursing homes alleging multiple civil rights violations including Title VI. After lengthy and extensive motions to dismiss and motions for summary judgment filed by the Defendants, the District Judge refused to dismiss the case. After several years of litigation and negotiation, we finally reached a settlement with the state Defendants including the Department of Human Services. The settlement with the State Department of Human Services includes, among other things, the creation of a Title VI monitor within the agency. To insure compliance, specific training on Title VI is to be provided to each caseworker. A Title VI complaint procedure was created. Strict and binding assurances where given that placement would be made in a non-discriminatory manner. New regulations were promulgated adopting the so-called "effects test" in Title VI cases. Finally, if an employee of the Department concludes that there is discrimination in placement that a nursing home will not accept minorities, then there must be a report sent to the State Health Department for Title VI enforcement which could include decertification of the nursing home under Medicaid.

Under the Grove City "program-specific" interpretation of "program or activity", the Court might not have had jurisdiction and the case may not have been successfully settled. Since social workers in the Department were paid with state funds, and not specifically federal funds, the Court might not have had jurisdiction. Without an agency-wide coverage, the Department could have continued to engage in racially discriminatory referrals in the area of long term health care.

The activities of the Department of Human Services in this case provide an excellent example of why an agency-wide coverage is needed. The definition of program and activity under HR 700 means all the operations of a department or agency of the state. Such broad coverage is imperative to assure that the type of discrimination experienced in the long term health care area in Memphis is allowed to occur in the future.

These cases are two real examples of the positive effect that Title VI has had on the desegregation of health care services in the Memphis area. I strongly endorse legislation embodied in HR 700. The passage of this bill would again insure that discrimination is prohibited by a recipient of federal financial assistance and would again assure equal access to needed, life-sustaining medical services. Our country's goals and principles require that public funds not be spent in any manner which encourages, subsidizes or otherwise results in racial discrimination. Without broad language contained in H.R. 700 covering all operations of private institutions, such as the rural hospital in West Tennessee, might be allowed to deny needed emergency services to physically ill black children. Without a broad, agency-wide definition like that found in HR 700, local welfare workers could again refer blacks to inferior and unregulated boarding homes while similarly situated whites are referred to Medicare and Medicaid funded nursing homes. I sincerely urge the Congress to pass HR 700 in order that progress achieved in desegregation of health care not be reversed. I again thank you for the opportunity.

RESPECTFULLY SUBMITTED,

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Mr. **Hayes**. Thank you.

The next witness is Mr. Bonnyman.

Mr. **Bonnyman**. Thank you, Mr. Chairman.

My name is Gordon Bonnyman. I am a staff attorney with Legal Services of Middle TN, a Legal Services Corporation-funded Program in Nashville.

Thank you for the opportunity to appear before your committees today to speak in support of passage of H.R. 700. I have practiced law in Tennessee for 12 years, representing low income clients in their efforts to gain access to health care.

Many of my clients are black, elderly, or handicapped, and are very much in need of the protections that would be afforded by the Civil Rights Restoration Act of 1985. They need that protection because the narrow interpretations of title VI, section 504, and the Age Discrimination Act which are implied in the Supreme Court's *Grove City* decision are particularly unworkable in the health care area. There are two factors which, when combined with *Grove City's* narrow focus on program or activity, threaten to frustrate our national policy of removing any taint of discrimination from the administration of federally-subsidized health care programs.

Those two factors, which are apparently unrelated but which converge in a very damaging way when you read them in light of *Grove City,* are first that Federal involvement in the delivery of health care, though very massive, is indirect; and two, that our health care delivery system through which Federal health subsidies are channeled is undergoing a revolution in its structure and organization, a revolution which has already proceeded quite far since the original enactment of title VI in 1964.

First, as you are all painfully aware, Federal health care expenditures are immense. These subsidies accounted for 29 percent of total U.S. expenditures for personal health care in 1983. The Medicare and Medicaid Programs in that year alone accounted for nearly $100 billion. As a practical matter, there are no significant providers of health care that do not receive Federal subsidies under one program or another. Indeed, in some cases such as renal dialysis or nursing home care entire industries have been built largely on subsidies provided by the Federal Government.

As massive as it is, however, Federal involvement in the delivery of health care is, generally speaking, indirect. Only a relatively small amount of federally-funded health services are provided directly by Federal Government agencies, such as the VA. Rather, most of the funds are channeled through private, State, or local health care providers. Moreover, there is no comprehensive Federal program through which these dollars are channeled. Instead, Federal subsidies are focused on the delivery of particular services or the coverage of particular populations. Thus, while in their aggregate Federal programs constitute the largest single source of payment for health care in our country, if you focus narrowly on a particular program or activity, you may well come away with a distorted impression that there is no Federal financial involvement at all.

This problem is compounded by far-reaching changes in the health care delivery system which are now taking place. They are often referred to as the corporation of health care. This transformation is characterized by the aggregation of health care providers into ever larger organizations. Nearly nonexistent when title VI was enacted, chains now control between one-third and one-half of all short-term general hospitals, nursing homes, community residences for the mentally impaired, and renal dialysis facilities in the United States. They grew by 9.5 percent last year alone. Their competitive advantages, when you look at the larger developments in the health care financing area, their competitive advantages assure their continued growth to a position of dominance in the delivery of health care. We are not only talking about institutional providers; one need only look at, for example, the way in which doctors are abandoning private practice in increasing numbers for group practices, HMO's, preferred provider organizations, and franchised clinics.

Paradoxically, even those providers that remain independent are finding it advantageous to spinoff multiple subsidiaries in order to conduct discrete programs or activities that formerly came under the umbrella of a single institution. For example, hospitals in my State are busy outdoing each other, spinning off subsidiaries to operate emergency rooms and other subsidiaries to operate parking facilities, and other subsidiaries or subdivisions to market staff physician services or home health care.

As a result, the dangers are rapidly multiplying, that a corporation that is enriched by the receipt of millions of dollars of Federal subsidies can escape compliance with Federal civil rights laws because it is organized in a fashion that segregates those revenues in particular subsidiaries which, under *Grove City,* could be deemed separate programs or activities.

These fears are real. There has been extensive intentional racial discrimination in admissions to nursing homes in Nashville and throughout Middle, TN, as Mr. Donati was indicating. We have had the same experience in Tennessee. I have personally had the experience of seeking nursing home placements for my clients and being asked very explicitly "Is he white or black?"

Yet an intermediate care facility that declines to accept Medicaid is beyond the reach of title VI, even though it is part of a large chain that receives a majority of its revenues from the Medicaid and Medicare Programs. I know of documented instances also in Tennessee where physicians have maintained segregated waiting rooms. Those same physicians, while not accepting Medicaid or Medicare themselves, could now participate as specialists in a large group practice or PPO, derive a part of their income from Medicare and Medicaid revenues generated by their associates, and yet still flout our civil rights laws.

For these reasons, it is imperative that the Congress move quickly to enacted H.R. 700.

Thank you.

[The prepared statement of Gordon Bonnyman follows:]

PREPARED STATEMENT OF GORDON BONNYMAN, LEGAL SERVICES OF MIDDLE TENNESSEE

Thank you for the opportunity to appear before your committees to speak in support of passage of H.R. 700. I have practiced law in Tennessee for 12 years representing low income Legal Services clients in their efforts to gain access to needed health care. Many of my clients are black, elderly or handicapped, and are very much in need of the protections that would be afforded by The Civil Rights Restoration Act of 1985.

They need the protection of the Act because the narrow interpretations of Title VI, Section 504 and the Age Discrimination Act which are implied by the Grove City decision are particularly unworkable in the health care area. There are two factors which, when combined with Grove City's narrow focus on "program on activity," threaten to frustrate our national policy of removing any taint of discrimination from the administration of federally subsidized health care delivery programs:

1) Federal involvement in the delivery of health care is massive but indirect; and

2) Our health care delivery system, through which federal health subsidies are channeled, is undergoing a revolution in its structure and organization.

Let me explain why these apparently unrelated factors converge to give the Grove City decision a particularly damaging effect in the health care area.

First, as you are all painfully aware, federal health care expenditures are immense. Those subsidies accounted for 29% of total U.S. expenditures for personal health care in 1983. The Medicare and Medicaid programs alone spent $94 billion in that same year. As a practical matter, there are no significant providers of health care that do not receive federal subsidies under one program or another. Indeed, in some cases such as renal dialysis or nursing home care, entire industries have been built largely on subsidies provided by the federal government.

As massive as it is, however, federal involvement in the delivery of health care is, generally speaking, indirect. Only a relatively small amount of federally funded health services are provided directly by federal government agencies; rather, most of the funds are channelled through private, state, or local health care providers. Moreover, there is no comprehensive federal program of subsidies for personal health services. Instead, federal subsidies are focused on the delivery of particular services or the coverage of specific populations. Thus, while in their aggregate federal programs constitute the largest single source of payment for health services, if you focus narrowly on a particular "program or activity," you could well come to the distorted conclusion that there is no federal financial involvement at all.

This problem is compounded by far reaching changes in the health care delivery system which are now taking place. They are often referred to as the "corporation" of health care. This transformation is characterized by the aggregation of health care providers into larger and larger organizations. Nearly non-existent when Title VI was enacted, chains now control between 1/3 and 1/2 of all short term general hospitals, nursing homes, community residences for the mentally impaired and renal dialysis facilities in the U.S. They grew by 9% last year, and their competitive advantages assure their continued growth to the point when they will soon dominate the delivery of health care. We are not talking only about institutions; doctors are increasingly combining into group practices, HMO's, preferred provider organizations (PPO's) or franchised clinics.

Paradoxically, even providers that remain independent are finding it advantageous to spin off multiple subsidiaries in order to conduct discrete programs or activities that formerly came under the umbrella of a single institution. For example, hospitals in my state are spinning off subsidiaries to operate emergency rooms or parking facilities or to market staff physician services or home health services.

As a result, the dangers are rapidly multiplying that a corporation that is enriched by the receipt of millions of dollars of federal subsidies can escape compliance with federal civil rights laws because it is organized in a fashion that segregates those revenues in particular subsidaries which, under Grove City, could be deemed separate "programs or activities."

These fears are real. There has been extensive, intentional, racial discrimination in admissions to nursing homes in Nashville and throughout Middle Tennessee. Yet an intermediate care facility that declines to accept Medicaid is beyond the reach of Title VI, even though it is part of a large chain that receives a majority of its revenues from the Medicaid and Medicare programs. I know of documented instances where Tennessee physicians have maintained segregated waiting rooms. Those same physicians, while not accepting Medicaid or Medicare themselves, could now participate as specialists in a large group practice or PPO, derive a part of their income from Medicare and Medicaid revenues generated by their associates, and yet still flout our civil rights laws.

For these reasons, it is imperative that the Congress move quickly to enact H.R. 700. Thank you.

Mr. HAYES. Miss Bristo.

Ms. BRISTO. My name is Marca Bristo and I am the executive director of Access Living, an independent living program here in Chicago. I am honored to be here to testify on my own behalf as a disabled person, as well as the members and clients of Access Living.

Before I became disabled from a diving accident 7 years ago, I worked as a registered nurse in the area of women's health care, in specifically labor and delivery. My nurses' training and education included no information on disability and no information on how to meet the needs of disabled patients.

On one occasion I was charged with the primary care of a pregnant woman who was deaf. Providing appropriate care for her was virtually impossible without an interpreter. I developed a flash card system, which I thought was kind of clever, to give her instructions during labor and delivery, but she had no effective means of communicating with me and, as a result, began to deliver her baby while she was still in the labor ward. Fortunately, there were no other complications. But if there had been, we could not have explained to her what was going on. As it was, the patient was terrified and frustrated with our feeble attempts to communicate with her. A sign language interpreter would have given her the benefit of the full range of ob/gyn services which were available to the nondisabled women at that hospital.

I was affected by another case involving a deaf woman who entered a Chicago hospital and again was not provided with an interpreter. She went to surgery with limited understanding of the nature of her illness and the nature of the surgery she was about to undergo. Imagine the pain, the shock, and the disbelief that this woman experienced when she woke up from the operation and discovered that one of her breasts had been removed. She was denied the basic right to be informed of her medical condition and the remedies available to her. She was a victim of discrimination.

I remained unaware of the full range of discrimination problems facing disabled people until I, too, became disabled. During my months of rehabilitation I received no information about my civil rights as a disabled person. It was a year after becoming disabled that I learned about section 504 of the Rehabilitation Act. Later, this information proved useful when I was accepted into a good master's degree nursing program at an inaccessible school. Because of section 504, I was able to gain access to the program I had applied for.

When I returned to work immediately following my 8-month stretch of rehabilitation, I was hired as a family planning specialist. The day-to-day problems I experienced as a disabled person I blamed on myself. Anything I was unable to do was my fault because I had broken my neck. It didn't occur to me at that time that most of the barriers I encountered were results of societal attitudes about my disability. My eyes began to open as I observed other disabled people with comparable experiences.

The clinic I worked at was a good example. I was in a wheelchair at this time. Because no one had any knowledge about the needs of disabled persons, those persons were often turned away, unseen, untreated, by a physician. Because of their disabilities, they were avoided and neglected by the treatment staff. None of us had received any training on what support services were available or how to accommodate the needs of our disabled patients. Our examination rooms were not accessible to wheelchair users.

Because of my growing sensitivity to disability issues, most disabled women who visited the clinic were transferred to me, whether or not they were there for family planning services. As I went through their charts, I realized that people with disabilities were not receiving the same thorough and complete screening that other patients routinely benefited from. Questions about sexuality, for example, were blatantly omitted from this process. Disabled patients simply were not receiving the same quality health care afforded nondisabled patients.

On more than one occasion I arranged transportation that sent women home from this clinic untreated when they were in need of treatment.

The clinic, however, was responsive to my efforts and those of others to advocate for the rights of disabled patients. With a little push from section 504, I might add, we were able to gain access to one of the examining rooms by installing an electric examination table. The rest was a matter of simple accommodation, such as adjusting schedules for patients who were at the mercy of the transportation providers' prearranged pickup times. We provided staff training on disability-related issues. With very little expense, the clinic was able to upgrade the quality of its care for disabled patients.

Health care professionals continue to be undereducated on disability issues. Discriminatory attitudes persist as long as we remain separated and segregated. Because of limited access to health care facilities, we have to shop around, not for the best, but for the one that will let us in. I could not see the dentist that my friends recommended because his office is not accessible to me. I am seeing a dentist whose selling point is an accessible office in a hospital.

Last year I became painfully aware that I had developed a physician-induced dependency on the drug valium, as well as an addiction to alcohol. I entered an excellent treatment program, but my recovery was slowed by problems of accessibility that constantly distracted me. I was forced to bury my personal rights-bearing attitude that had taken me years to develop because I so desperately needed the services which would save my life. I had to submit myself to many forms of exclusionary treatment and procedures that would strip my dignity and increase my vulnerability to the emotionally draining process I was trying to get through.

For example, the women's washrooms were not accessible to me; I had to get up an hour earlier than everyone else in the program because I had to shower in the men's room before anyone else wanted to use it. Counseling for me, too, has been more difficult to access because of architectural barriers. There is no handicapped parking space near my counselor's office. There is a step to get into the building. I have waited for 20 minutes in the snow, in subzero weather here in Chicago, for someone to help me into the building.

It is difficult enough to admit to and deal with an alcohol problem. The recovery process should not be fraught with these other barriers. What do we do when the life-saving treatment we need is at the top of a flight of stairs? Four or five times a week I must be carried up and down a flight of steps in order for me to stay sober and to stay alive.

The impact of alcohol and substance abuse problems in this country is only beginning to be realized and researched. The problem has not yet been acknowledged in the disability community. It is easy for a disabled person to deny the problem. It is reinforced by the medical profession who prescribe pain medication and muscle relaxers indiscriminately to disabled patients. It is reinforced by society who thinks: What do they have to live for anyway? I would drink, too, if I were them. It makes it that much more difficult for us to reach out when we need help.

Health care professionals must learn about disability. It is a matter of life or death for us.

My current job keeps me in day-to-day contact with the needs of disabled persons. Access Living provides a broad range of services that can help disabled persons live independently in the community. Because in Chicago disabled citizens do not have equal access to education, employment, housing, transportation, health and social services, we must do more than provide services. We must advocate for the full rights of our clients to participate equally in an integrated society. And we must teach our clients to advocate for themselves. We can learn independent living skills, but to what avail if employers won't hire us, if there is no accessible, affordable housing available to us, if we are denied access to public transportation? This complex discrimination system turns potential taxpayers into tax burdens. Too many of us are locked up in nursing homes—well over 10,000 in Cook County right now—and institutions because we have been denied the opportunities available to other members of our society.

Section 504 is Congress' promise to the 36 million of us disabled citizens that we will have the opportunity to participate fully in society. The Supreme Court's *Grove City* decision has taken away that promise. We must now ask Congress to restore our rights, to reaffirm its commitment to a just society. We ask for swift passage of the Civil Rights Restoration Act of 1985.

Thank you very much.

Mr. HAYES. Thank you. I should have said to each of you panelists that your entire statement, as prepared, will be entered into the record of the hearing. If you just want to deal with the highlights of your statement, feel at liberty to do so.

Ken Williams.

Mr. **Williams**. First of all, my name is Kenneth Williams. I am a housing coordinator at Access Living, which is an independent living center for disabled people serving the metropolitan Chicago area.

First of all I would like to thank you, Mr. Chairman, and the rest of the members of the committee, for allowing me to speak today on housing as it relates to the disabled and in support of House bill 700.

One of the major duties that I have as housing coordinator is to do housing placement; as a result, I have had the opportunity to see how a small portion of the disabled community lives and how a larger portion tends to just exist. With the passage of section 504 of the Rehabilitation Act of 1973, disabled people were afforded basic civil rights protection. For the first time, dreams of having full access and, thus, the ability to productively participate in our society, were realized. Visible improvements have been made in a number of areas, one of those being housing. Prior to the enactment of Section 504 many disabled people were basically housed in nursing homes or other institutions or they simply lived in inaccessible housing, basically out of sight to the rest of the population.

Since many disabled people live in supervised settings and, therefore, viewed as unable to care for themselves, it was a foregone conclusion that independent living was unnecessary and therefore unrealistic. For a small segment of that population who were fortunate enough to be able to access part of the community, and at the same time be able to financially compete in the general housing market, they, too, still basically were confronted with some form of discrimination as far as their disability is concerned, as well as through the existence of architectual barriers. But even in view of that, sometimes they have to swallow their pride and accept inaccessible places to live in order to have a place to live. They basically have to ask people to help them here, help them there, in and out of apartments.

With the enactment of section 504, discrimination because of a person's disability was outlawed and federally assisted housing developments had to be made accessible to meet the needs of the disabled. Also, with the assistance of subsidy programs such as section 8 and section 202, for example, accessible housing was made affordable to disabled people. Many people forced to live in nursing homes and institutions and inaccessible apartments and houses now were able to live in affordable and accessible residences.

Unfortunately, even with the enactment of section 504, discrimination still exists in the housing industry. Here are a couple of examples to illustrate that point.

There was a young man who had cerebral palsy. He thought he was fortunate enough to rent an apartment. The landlord told him that all of the repairs in the building and in his apartment he would, in fact, have to pay for. Not knowing exactly what he meant by this, he thought later on he would, in fact, be reimbursed. He had faucets that didn't have turning handles on them when he moved into the apartment; there was water leaking from the apartment upstairs, causing cracks in the wall, and as a result eventually ended up as big holes in his apartment. There were also window panes missing from the windows in that apartment.

So the tenant went on and paid for the repairs to be done. As a result, he was rewarded by his landlord with a rent hike of $100, out of the range for him to pay. It was far beyond his ability to pay, in other words. As a result, he had to find another place to live. As a result, he was out in the cold for a while. This is pure discrimination on the part of the landlord.

Another instance was a deaf couple—and this happens frequently with people who are deaf. They are one of the most highly discriminated against groups of disabled people when it comes to housing. They rented an apartment in a poorly maintained building to begin with. The reason they had to accept the apartment was because they were having a difficult time finding housing in the first place. They were charged $350 for a one-bedroom apartment, plus utilities, whereas the other two tenants in the building who were able-bodied had two-bedroom apartments and were charged $280 for rent.

Now, the landlord unlawfully connected all the gas to their meter, to their apartment, and as a result, when the gas bill would come, they had this enormous gas bill. They didn't understand why they were getting it. They confronted the landlord through the assistance of a relative who was slightly hearing-impaired but, in fact, could translate for them. The landlord immediately told them that they should just basically not use so much gas in their day-today activities.

Then they also confronted him about the damage in the apartment. There were holes in the walls and he accused them of causing that damage. Then they threatened to go to the city and complain about all the code violations in the building, because there were a number of them. He immediately forced them to move out.

Subsequently, in their search for housing, they came across a building that was, in fact, subsidized with Federal funds, and there was an apartment available that was designed for the disabled. They were told by the manager that they were ineligible for that apartment because they weren't handicapped.

These are just a couple of examples of the types of discrimination going on today in the housing industry as far as the disabled are concerned.

With the reduction also of funds to build subsidized housing, you have more disabled people out in the community who don't even have the opportunity to realize the possibility of living in an accessible apartment. The majority of disabled people are unemployed and thus are on fixed incomes, such as SSI or SSDI, which means that the only way they can afford to have a decent place to live is to secure subsidized housing. This is no easy task basically because the demands for subsidized housing far exceeds the number of units that are out in the community.

With the elimination of such programs as section 8 multifamily programs, the majority of the units being built today are one-bedroom units. So basically disabled people who have families are hard-pressed to fine two-, three-, or four-bedroom units of a low income variety because basically most of them can't afford to compete in the general housing market.

The implications of the *Grove City* decision can only serve to further dilute the meaning and intent of section 504. It is now possible, for example, for a building to receive Federal funds in order to make a part of that building's apartments subsidized and a percentage of those subsidies is designed for people with disabilities. Now, the recreation area, the health facilities, and even parking, technically would not have to be accessible to that disabled population in that building the way things are now.

To continue to permit the destruction of civil rights of disabled people is a direct contradiction of what this country is supposed to stand for. Until the Civil Rights Restoration Act of 1985 is passed, to say there is freedom and justice for all is pure hypocracy.

Thank you.

Mr. **Hayes**. Thank you.

Mr. Caruso.

Mr. **Caruso**. I am general counsel of the Leadership Council for Metropolitan Open Communities in Chicago, and our task in Chicago is to eliminate discrimination in housing. We have been at that since 1966 and we're very proud of our record in doing things about it. However, Chicago is still the most segregated city in the country. The Chicago area is the most segregated area in the country. We still think we have been very successful.

The problem of discrimination in housing is one that no one wants to talk about or to acknowledge, and it is a very, very serious problem. Otto Kerner, who was in this courthouse, said we are going toward two societies—one white and one black. It appears that we are on that track again. A recent study that was reported in the New York Times this morning said that even in the area of language, because of this intense segregation, we are getting more and more separate vernaculars between whites and blacks, and that's because whites and blacks don't see each other and most children don't even talk to a white person until they are 6 years old.

Now, I don't know whether there is any question about how serious housing discrimination is, but I don't have to look at my statement if you want 3 days of testimony on the seriousness in Chicago.

The housing market is unique because housing has historically in this country depended on Federal support. You can find examples like our Dearborn Park and things like that, where private efforts have been made to show that private housing can be built which will not be segregated and without any title VI involvement. People can build nondiscriminatory housing. But if you look at the people that did that, you will see that they made great efforts to do that. So mainly our housing depends on Federal support.

Secondly, big developers in the housing business cross over. To say that one little development of 1,000 units does not affect another development of 10,000 units in Seattle is not to recognize the truth of the matter. The general counsel of the corporation in Seattle does the legal work for the 1,000 unit development down here in Chicago. They make money because they discriminate in Chicago, which they use to bolster and support their developments in other parts of the country that are all white.

So maybe housing is unique. I see my colleagues here questioning me because their problems with discrimination are great, but housing is really our last agenda. Until people live together and get to know each other before they're six, we're not going to eliminate the problems that may eventually separate this country.

Now, I think probably there are some things that you would like from us as examples. The Leadership Council files lawsuits when they have complaints of discrimination. We have filed over 700 cases that probably involves 3,000 different plaintiffs and as many defendants. In many of our cases, section 8 is involved in government support. I would like to give you just a couple of examples of why title VI is important. We have a very active HUD office here in Chicago. They are good, they are independent, and they get results in their title VI investigations, their compliance reviews.

Another problem is—and I referred to it in my statement—was in *Young* v. *Pierce* and to *Clients Council* v. *Pierce.* As we found in discrimination, HUD, the funder, is often part of the problem. Let me give you an example of how HUD can be the problem and why title VI is important.

We had a case in Chicago where there was a building that had 100 units, section 8, and an additional 300 units nonsection 8. The people in that building—who, by the way, were the people I was talking about, from the west coast—went to one HUD office and got approval of what they called a dual lottery. They were supposed to have 100 units section 8. They put aside 60 of those for blacks in one lottery, and 40 for whites, based on the mix that they were told was in Chicago.

Now, what happened, of course, was that about 200 black section 8 applied. They went in the 60 lottery, so 60 of the 200 got units. About 20 whites applied and they went in the white lottery. And you know what? All the whites got units. We sued, of course. As a result of that, we received a class action certification. We had black clients who wanted to move into the building under section 8 into the building. Other of our black section 8 clients who wanted to move into other buildings that were all white in the Chicago metropolitan area, that were run by the same operation, had that opportunity. The defendants were required to provide buses, if you will, to take our clients to these all-white developments and all-white suburbs. We also got money for our clients and a continuing consent order that required there be no discrimination in this development in Chicago.

Now, why is that case important? I don't think we would have gotten that settlement except for the fact that HUD began the wheels rolling to do a title VIII compliance review of some, as I understand it, 20,000 units throughout this country. Once the defendants realized that all of their units around the country were going to be looked into, they decided they had better settle and settle quick.

I can give examples of a case we had involving another such development, where our client and the lawyers working with it knew that they had another development in Arizona, and when it became clear that that completely segregated development would be looked into, with an attendant shopping center, because HUD money was involved, we settled that case. We can go on and on with things like Circle Park and some other developments here in Chicago, where when a title VI compliance review got to be in the works, settlements were entered into.

Now, it may be that an argument would be made that—by the way, the first case I referred to was *Neely* v. *1212 South Michigan Avenue.* It may be argued that that is a way of applying pressure. It occurred to me that someone might say is that really fair.

I'm a private attorney. As the general counsel for the Leadership Council, I am totally a private attorney. The Leadership Council is, for the most part, privately funded. As a private attorney, I don't think HUD moves fast enough. I don't think they're tough enough. I think, if there is such a thing, they are overly excited about due process. I think that people who I believe are clearly discriminating—I thought that might get a rise—people who are clearly discriminating are allowed second and third and fourth and fifth chances by HUD to comply. If you read *Clients Council* or *Young* v. *Pierce,* you will see that even though there was clear evidence of discrimination, HUD continued to persuade and to urge and to hold back cutting off funds.

I don't think there is any danger that the application of title VI by HUD is going to be oppressive to any small business, because most of these people are "big bucks" people. I don't think there is any concern that the application of title VI is going to be abused by HUD because, if anything, they move too slowly and too carefully and are too gracious with people who are found to be discriminating. I think that title VI, in the housing field, is a necessity to deal with big, powerful people who have a lot of money, who are discriminating against title VIII people and against people who do not have the wherewithal to battle these large, multinational corporations that are getting money from the Department of Housing and Urban Development.

It may be, as someone said earlier, that people are like snowflakes. I think all snowflakes are white—[laughter]. I have some trouble with that. But people are distinct and there is no question that these laws prevent the kind of across-the-board discrimination by big, big operations, that require somebody big like HUD to do something about it. If anything, this legislation, it seems to me, as far as coverage is concerned, reinstates the law as I have always understood it to be.

As far as any remedies are concerned, I really would like to see the law returned to what I thought it was. I think the remedy section here may limit what previously was done. But, in spite of that, I think, to address our most current and most difficult problem, this bill should be passed as quickly as possible to give HUD that authority.

[The prepared statement of F. Willis Caruso follows:]

PREPARED STATEMENT OF F. WILLIS CARUSO, GENERAL COUNSEL, LEADERSHIP COUNCIL FOR METROPOLITAN OPEN COMMUNITIES

THIS STATEMENT IS MADE IN SUPPORT OF HOUSE BILL H.R. 700 WHICH WILL RESTORE THE BROAD COVERAGE NEEDED IN AND CLARIFY THE APPLICATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND OTHER STATUTES.

THE LEADERSHIP COUNCIL FOR METROPOLITAN OPEN COMMUNITIES (LEADERSHIP COUNCIL), IS A PRIVATE FAIR HOUSING AGENCY WORKING TO ELIMINATE DISCRIMINATION IN HOUSING THROUGHOUT THE CHICAGO METROPOLITAN AREA. SINCE 1966 WHEN IT WAS FORMED AS A RESULT OF THE CHICAGO FREEDOM MOVEMENT LED BY DR. MARTIN LUTHER KING, JR. IT HAS LED THE WAY IN ENFORCEMENT OF FAIR HOUSING IN THE COURTS AND WORKING WITH ADMINISTRATIVE AGENCIES INCLUDING THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

DURING THE PERIOD FROM 1968 TO THE PRESENT IT HAS LITIGATED MORE THAN 700 FAIR HOUSING MATTERS. HUD'S COMPLIANCE REVIEWS UNDER TITLE VI HAVE PLAYED AN IMPORTANT ROLE IN MANY OF ACTIONS TAKEN BY THE LEADERSHIP COUNCIL AND HAVE BEEN INSTRUMENTAL IN OBTAINING SIGNIFICANT RESULTS. FOR THIS REASON WE ARE PLEASED TO GIVE OUR FULL SUPPORT TO H.R. 700.

IT HAS BEEN OUR INTERPRETATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 THAT IT DID PROVIDE THE NECESSARY

COVERAGE OF ALL OPERATIONS OF A HOUSING PROVIDER WITH FEDERAL FINANCIAL ASSISTANCE. THIS BILL APPEARS TO NARROW TO SOME EXTENT THE REMEDIES THAT MAY BE SOUGHT. IT DOES NOT EXPAND WHAT WE BELIEVE HAS BEEN THE COVERAGE.

IN THE HOUSING FIELD, FEDERAL ASSISTANCE HAS PLAYED A MAJOR ROLE IN DEVELOPMENT OF HOUSING AND THE SUCCESS OF THOSE DEVELOPERS WHO TAKE ADVANTAGE OF THE AVAILABILITY OF FEDERAL FINANCIAL ASSISTANCE. IN SEVERAL RECENT CASES HANDLED BY THE LEADERSHIP COUNCIL THE COMMENCEMENT BY HUD OF A TITLE VI COMPLIANCE REVIEW OR THE ANNOUNCEMENT IT WAS ABOUT TO BEGIN HAS HAD THE RESULT OF BRINGING THE RESPONDENT OR DEFENDANT INTO COMPLIANCE.

WE BELIEVE THE CASES THAT DEAL WITH TITLE VI ARE INSTRUCTIVE AND INDICATE IT WAS THE PURPOSE OF THE STATUTE TO ELIMINATE DISCRIMINATION WITH RESPECT TO HOUSING THAT IS PROVIDED WITH FEDERAL FINANCIAL ASSISTANCE. SEE YOUNG V. PIERCE, 544 F.SUPP. 1010 (E.D. TEXAS, PAR. DIV. 1982) AND CLIENTS COUNCIL V. PIERCE, 711 F.2d 1406 (8TH CIR. 1983).

Mr. **Hayes**. Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Mr. Caruso, your last sentence piqued my curiosity. The pinpoint language which is changed in this bill, to which you referred, strikes out "program or part thereof in which" and inserts therein "assistance which supports."

Don't you think the amendment is actually broader than the existing law? I'll repeat it again. What is stricken from the old law is "program or part thereof in which," and instead "assistance which supports" is inserted therein.

Mr. **Caruso**. Well, what I understood before to be the case, if a developer was caught, that they could be excluded from all programs; they could be debarred. Everything that they were involved in in any way they could be cut out of. The way I see this is that you're just going to stop the assistance to a particular development.

I may be wrong. Maybe it's just as broad as it was in the past. But that seems to me to be what this does. It limits what can be done to just a specific kind of assistance and support.

Mr. **Sensenbrenner**. Your response is the first time I have heard the argument made from that perspective. Other people have come before the subcommittee indicating that the amendment to the pinpoint language in title VI actually expands the scope of the coverage, and they cite the *Finch* case.

Now, I am from the Judiciary Committee end of this. We're a bunch of lawyers and sometimes we act like a mini-Supreme Court and crossing T's and dotting I's, trying to find out exactly what proposed language really means, so that the intent of Congress and instructions to the court can be clear. My colleagues, Mr. Hayes, is from the education and labor end of it and he is less concerned with that and more concerned with broad public policy implications.

I said in this morning's hearing that one of the reasons we're here is because Congress was not clear in 1972, when it passed title IX, in what it intended, and the Supreme Court, according to all of us, really misconstrued what the real intent of Congress was. Therefore, we had better be doubly careful in drafting legislation to respond to the *Grove City* case so that we aren't back here another 10 years from now debating about how to fix up the law as a result of the Supreme Court doing something which never was intended.

So I guess you kind of made my point, in that there is varying interpretation as to this amendment to the law, and we had better make it crystal clear before this bill goes sailing through Congress, lest we end up finding out that we didn't do what we had hoped to do.

Mr. **Caruso**. Let me just respond that I intend to add to my statement, which I am told I can, some exhibits. One of the things I would like to try to get is some of the interpretations that have been made by HUD. I think that *Clients Council* v. *Pierce* should be read closely, to try to understand how people see the remedy section. I will try to get a copy of these of these memoranda where there have been attempts to interpret this. I think it would be helpful.

Mr. **Sensenbrenner**. You see, one of the problems that has been brought to the attention of the committee is that if this bill is expansive and covers entities that do not receive direct Federal aid, the administrative response of cutting off Federal aid really doesn't make any difference, because if you aren't getting any Federal aid to begin with, there is nothing to take away. That, of course, does not diminish the right of the Justice Department to bring an action or a private suit to be filed. But in my opinion there has got to be some rather strict delineations as to exactly where the assistance which supports discrimination, how many filters it has got to go through in order to bring in under the coverage of this piece of legislation, lest all this bill becomes is the Civil Rights Lawyers Relief Act of 1985.

Mr. CARUSO. Of course, being a private lawyer, I'm not against that. [Laughter.]

Mr. SENSENBRENNER. Well, we are, because we have a deficit to contend with.

Mr. CARUSO. The only thing I would add to that is that debarring seems to me to be important. I'm not sure that this language would preclude debarring. But where you have big developers, one of the strongest things that title VIII compliance does is lead to a debarrment. The money comes from developing, and if you can't get money from HUD to develop, then your wherewithal is out. I don't know whether that is meant to preclude that, but that's the immediate concern that I would have.

Mr. SENSENBRENNER. Thank you, Mr. Caruso.

Mr. HAYES. Mr. Caruso, having been one who back in the sixties participated with the leadership council for Metropolitan Open Communities, during the time that Martin Luther King was alive, who came to Chicago during that period to try to change the discriminatory housing pattern that existed in the city at that time—and I'm in agreement with your characterization, that we're still one of the most segregated cities in the United States; the neighborhoods have expanded a little bit, but for the most part, though, the poor have been shot up in the air rather than expanded in many areas.

I know there have been some laws that changed things, but I would like to have you expand further on the notion that corporationwide coverage was within the scope of some of these laws prior to the *Grove City* decision, and why this is an effective element of voluntary compliance.

Mr. CARUSO. Well, I don't think it has been without issue at HUD that title VI covers all operations of a developer or a managing company. But here in Chicago the HUD office has taken the position that title VI covers the company in every operation and every development that they have. The recommendations to cutoff funds have been along those lines. Now, it has been in other areas, too, like the police situation in Chicago, and there have been a couple of other instances with municipalities where funds have been cutoff.

It has been effective because—In a recent case we had, here is the fact situation. What we have going on in the housing situation today is that there were a lot of vacancies in Chicago. When that occurred, the leadership council had a program called the Gattro Program arising out of the *Gattro* case. In that program, the leadership council would take section 8 eligible persons from the Chicago Housing Authority and afford those people opportunities under the *Gattro* decision to live in places outside the city of Chicago where black persons would otherwise not normally have such an opportunity.

Because of the vacancies in a voluntary program, the developers in DuPage County, for example, in Woodridge, were willing to take black section 8 persons from the Chicago Housing Authority to move in so that they could pay their bills.

Now, as was pointed out, housing starts are declining; housing is becoming more dear; those people no longer need section 8 because they can get people to move in. And if I may say so, if they can move the blacks out of those buildings, it will become more desirable, in their view, to whites. So there is a broad eviction policy to move section 8 people out of the Woodridge apartments. This isn't the first time and I have sued several of those apartments along Jayne Avenue there in Woodridge. We have settled all of those cases and all of our clients have been allowed to stay if they wanted to.

In this most recent case, we saw that same pattern. When we sued, all we wanted for all of our clients was to stay through high school graduation, because these women have children graduating from high school. The defendants took a sort of mean stance, that they had to move out by the end of March. They were going to litigate if they didn't. Our three clients, who had sons in high school, were willing to forego for the other six people to stay in throughout the year, these three women were willing to move out in March. It seemed like a hopeless situation.

HUD then announced that it was starting its title VI compliance review. I got a call from the defendant's attorney. I will be candid and acknowledge that that defendant's attorney, who used to work for Legal Aid but now works for a big law firm, told me she understood how things were done and accused me of possibly encouraging HUD to start a title VI compliance. I didn't—I guess I may be under oath or not here—but I didn't. But the beginning of that title VI compliance allowed us to keep three women in their apartment complex until the end of June, so their children could graduate with their high school classes.

Now, that is a very practical way. HUD is not pushing these people around. It is simply bringing the parties together so they can stay there through June. This is just a very practical way.

I think in the process, also, we are putting together a consent order that will help us train their staff, have them reporting to the Leadership Council. If they feel they are having trouble with their black tenants, they can come to Mary Davis at the Leadership Council and talk over those problems. We are creating new methods to bring the white management together with its black tenants.

You know, I can go on and on and on. I don't know how many cases you want. We can give you our case report of 700 cases and point out to you—You know, we have beautiful cases, like a suit against the 1776 apartments up there by Schaumberg, where they have a great big American flag on the entrance and they tried to evict 10 black tenants. We have a lot of examples.

But bringing title VI in through HUD and the staff at HUD I think has a very positive effect on housing for people, and I don't think most of the developers feel that it's an abusive process.

Mr. HAYES. One final question of you which doesn't require such an expansive answer, I don't guess. William Bradford Reynolds frequently cites the remarkable record of the Civil Rights Division of the Department of Justice. How would you describe their record of enforcement?

Mr. CARUSO. Well, Congressman, we have a very unique situation in Chicago. Cale Williams and I, at the urging of the staff of the Justice Department, met with William Bradford Reynolds. In that meeting we discussed very frankly with him the problems that we have here in Chicago. That was approximately, as I recall—I don't think Cale is here—but I think it was about 2 years ago. William Bradford Reynolds assured us that he would move vigorously in Chicago, particularly on cases of harassment. I am very pleased you asked me this question.

We have been turning over our testing information to William Bradford Reynolds and his staff directly. As a result of that, in the last 18 months the Justice Department has filed 11 cases in Chicago based on information provided by the leadership council. All of those cases have been settled, we believe with good consent orders, except one. We believe that that is a large portion of the number of cases that have been filed by the Justice Department.

If Mr. Reynolds were here today, I would tell him, in response to your question, that I believe it's a good start, but I think their record is still somewhat behind the 29 cases filed when Frank Schwelb was in that office back in the early and midseventies. I think we would expect him to do better than was done in the seventies because we know so much more about fair housing and so forth.

One of the things that is a terrible problem today is harassment, because I think the market is shrinking and there is less housing available. The need for allowing blacks and other minorities to move to other areas is no longer economically necessary. In our *Cicero* case, for example, and in our *Evergreen Park* case, where we filed a suit, and in Oak Lawn and other places, harassment, brutal harassment, is a serious matter. Although we have turned all of those over to Mr. Reynolds and they are being investigated by the FBI, we think a congressional investigation might give Mr. Reynolds more clout and more strength and more money. This may be what he really needs to deal with harassment. It would be a very good thing for Congress to do.

Mr. SENSENBRENNER. Would the gentleman from Illinois yield?

Mr. HAYES. I yield.

Mr. SENSENBRENNER. Our subcommittee authorizes the budget for the Civil Rights Division. At last year's budget authorization hearings we had some testimony from organizations and individuals that I had thought were responsible suggesting that we abolish the Civil Rights Division and complete defund it all together. I don't agree with that, but——

Mr. CARUSO. Were they people supporting fair housing or against fair housing?

Mr. SENSENBRENNER. They were people supporting fair housing. It was simply because they didn't agree with everything that Mr. Reynolds did. They thought he should be put out of business, that we in Congress ought to put him out of business.

I don't agree with that, and fortunately the Congress did not, either. But I think your suggestion about the budget levels of the Civil Rights Division are very much in point because it's obvious that, in the case of Chicago, there has been some good done since Mr. Reynolds took charge of that division.

Mr. CARUSO. I may disagree with some of my colleagues, and maybe even some sitting at the table—and I may find out after this hearing—but I would urge all the money possible to support Mr. Reynolds and his staff, which I think has some very excellent people on it. Now, that may be heresy among my colleagues, but I will take that risk.

I think hearings on harassment would maybe bring to the forefront how serious a matter that is today. It might assist Mr. Reynolds and his very excellent staff in being able to move more quickly and getting more FBI support and bringing more cases. That may not be what everyone would like me to say but that's the way I feel.

Mr. SENSENBRENNER. Thank you, Mr. Caruso.

Mr. HAYES. Just let me make this comment. It goes beyond the question of housing. There is a growing feeling among some of the staunchest supporters of civil rights that, unless Mr. Pendleton stops some of his utterances, there's a strong feeling that we're wasting money in continuing to support that department. There is a growing tendency to accuse those who are discriminated against of being the discriminators. So I just wanted to add that. That is a growing problem.

Mr. CARUSO. It may be that Mr. Pendleton has added a new word to our language and we can thank him for that. Perhaps we could refer to people as Pendletons——

I read the other day he's going to kind of keep quiet for a while, so it may subside.

Mr. CARUSO. I think that the danger with what Mr. Pendleton has said is that it encourages people that might go out—you know, harassment is something that, in Reverend Hall's case, where we filed a $3 million suit, they burned the house to the ground. Fortunately, some white neighbors put ladders up on the windows and the family escaped from the fire. But it was flat shocking. That was maybe somebody that heard some official say something that gave him the idea that if he went out and burned down a black's house in a white neighborhood he would be lauded for doing that. So it really is a very serious thing. I don't mean to take it lightly.

Mr. HAYES. Could I beg of you, Mr. Caruso, to submit to our committee some of the examples which you have had, some of the experiences, particularly in the area of housing as it relates to discrimination, so the committee can have it for its own benefit.

Mr. CARUSO. We certainly will. Thank you.

Mr. HAYES. I have a couple more questions to be directed to others on the panel in the health care area.

Would the *Grove City* decision allow dual health care systems based on race to exist?

Mr. DONATI. There is no question in my mind that it would definitely hurt efforts to desegregate the system in Memphis. I'll give you an example.

We're talking about corporations here. In the lawsuit we filed, *Hickman* v. *Fowinkle*, it involved 15 private nursing homes. There were three nursing homes with one chain. After the suit was filed and the Department of Health and Human Services began to investigate, the Office of Civil Rights of that agency, this particular chain wanted to compare those three nursing homes and add a fourth nursing home to see if their statistics were close to the composition of the Memphis community. The reason they wanted to do that, they had a central city facility that was virtually 90 percent black, and they had three suburban facilities that were 100 percent white. If you would have added those together, it perhaps would have been 25 percent. There was no doubt in that case that they were steering black nursing home recipients to the central city facility and steering whites to the other facilities.

My opinion is that, without title VI, that nursing home would still be engaged in the activities they were then—without corporatewide coverage they would be—and that was a few years back before you got into very, very sophisticated corporate structures in the nursing home area, wholly owned subsidiaries, partially owned subsidiaries. I think that is imperative to maintain what progress has been made and to continue to work in that area.

Mr. BONNYMAN. Mr. Chairman, if I might speak to that, I would vary the question simply—at least in the area of the country I am familiar with—to ask not could it lead to dual health care systems, but does *Grove City* hinder our dismantlement of an existing dual health care system.

Mr. Donati's comments about the stark disparity in statistics in Medicaid eligibility in Shelby County where he is from, as compared with the number of blacks in nursing homes on Medicaid, really mirrors, although perhaps in a more extreme fashion, a pattern that is reflected in statewide statistics. Nursing home extended care for the elderly is segregated throughout Tennessee, with substandard care being delivered in boarding homes to blacks as compared to nursing home care to whites.

I would simply say that the problem is closer to the housing analogy that Mr. Caruso has talked about, of how do we dismantle a system that is already there. It is particularly shocking in the nursing home context because, although housing may be greatly aided by the Federal Government, the nursing home industry is built entirely, or nearly entirely, on the Medicaid and Medicare Programs. If you took those programs away, you simply would not have those industries.

Mr. HAYES. Could you by chance just briefly expand on what I consider to be a change in the nature of health care systems, which you both alluded to to some extent, from public agencies to private corporations, such as HMO's and some of the other things? How does this relate to coverage of corporations?

Mr. BONNYMAN. Let me give you an example. A public hospital in Tennessee, county-owned, I don't know how many subdivisions it has, but it has spunoff a whole plethora of different subsidiaries that market different services. This is typical and it is going to become the predominant mode of organization in health care delivery systems in the future.

Marketing is the buzz word today in health care. When you talk marketing, you begin to talk about some of the housing marketing strategies, that if we get rid of the blacks, if we get rid of other minorities, can we make our services that we are marketing in a competitive environment more attractive to a more lucrative white market? That is the reality.

We have got to change our way of thinking about health care to reflect the way the providers are thinking about it. It is now a commodity to be marketed, rather than a public service to be delivered on a humanitarian basis. That is the reality. It is going to move increasingly in that direction.

I think that is what makes *Grove City* so pernicious, because if you go to increasingly sophisticated corporate structures, it becomes possible to have one marketing strategy over here and another over there, to thereby violate our civil rights laws.

Mr. HAYES. Do you have anything to add, Mr. Donati?

Mr. DONATI. I agree completely with that.

The other point I would just like to make, it wasn't too many years ago where virtually all of the health care delivery either consisted of county-owned hospitals or county-owned health agencies or charitable, not-for-profit corporations. In our area of the country, the public hospital in Memphis is no longer a public facility but is owned by a not-for-profit corporation. Many of the not-for-profit corporations are taking on more characteristics of private for-profit entities. They are so many privately-owned, for-profit hospitals that are being purchased throughout the area of the country we live in, that the health care industry has changed from a public facility or public service industry to a for-profit operation. As Gordon mentioned, that has occurred throughout the State.

Sophisticated lawyers can come up with different corporate designs in order to avoid the remedial purpose of this legislation. I think it is imperative that you stop it now.

Mr. HAYES. I want to thank each of the panelists for your participation and contribution to what I consider to be—and I am sure I reflect the opinion of most of the members, if not all, of our committee here—of at least some enlightenment, a feeling and sense of direction in our efforts to try to undo what was done by the Supreme Court decision in the *Grove City* case.

Our proposal at this point is to try to pass the Congress and hope, if we're successful in doing so, that we will be able to get the President's signature, although he seems to be a little bit prone to veto certain things he disagrees with very quickly. But we are hopeful——

Mr. SENSENBRENNER. That's what happens when you're a lame duck, sir. [Laughter.]

Mr. HAYES. We are hopeful that you understand we are going throughout the country, with the purpose and reason to try to ferret out at least ideas of support for or against it. You can be against it if you like. You're entitled to your opinions. We are seeking a sense of direction to go in order to pass legislation that at least ends discrimination in all facets of our society. I think that ought to be our objective, whether it is in the field of housing, in the field of medicine, education—you name it, we're against it.

I want to thank you for what you have done here. We appreciate it.

This concludes the hearing for today. Thank you very much.

[Whereupon, at 3:40 p.m., the joint committees were adjourned.]

CIVIL RIGHTS RESTORATION ACT OF 1985

FRIDAY, MARCH 22, 1985

HOUSE OF REPRESENTATIVES, COMMITTEE ON EDUCATION AND LABOR, AND SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS, COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committees met, pursuant to call, at 9:30 a.m., in the Kinsey Auditorium, Museum of Science and Industry, Exposition Park, Los Angeles, CA, Hon. Augustus F. Hawkins (chairman of the Committee on Education and Labor) presiding.

Members present: Representatives Hawkins, Hayes, Jeffords, and Sensenbrenner.

Also present: Representatives Dixon and Dannemeyer.

Staff present: Edmund D. Cooke, counsel, Committee on Education and Labor; Karen S. Vagley, associate counsel, Committee on Education and Labor; Ivy L. Davis, assistant counsel, Subcommittee on Civil and Constitutional Rights; Electra C. Beahler, minority counsel, Committee on Education and Labor; and Phillip Kiko, minority associate counsel, Subcommittee on Civil and Constitutional Rights.

The CHAIRMAN. The committees will be in order.

The full Committee on Education and Labor and the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary meet today to continue a series of hearings on H.R. 700, the Civil Rights Restoration Act of 1985. We welcome our many visitors and the witnesses who have agreed to appear today.

H.R. 700 provides for the restoration of the four civil rights statutes to their pre-*Grove City* coverage and vitality. As most of you know, the four statutes in question are title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964. In essense, however, H.R. 700 sets forth a very simple notion—that Federal dollars should not be allowed to subsidize discrimination against minorities, women, the elderly, or the disabled and that, if discrimination occurs, there is a remedy available. This is not a new-found or startling notion; in fact, it is a view to which most people in this country subscribe and already believe exists in law.

The Civil Rights Act of 1964, the model of the other three statutes covered by H.R. 700, was by far the most significant civil rights legislation in this Nation's history and provided very simply:

> No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected

to discrimination under any program or activity receiving Federal financial assistance.

This has been the law of the land since 1964 and, until the *Grove City* decision, was believed to be broad in nature and an expansive enforcement tool by which to remedy discrimination. The *Grove City* decision has changed that and, as a result, these statutes have become the means by which institutions can segregate their Federal dollars so as to avoid any remedy for actual acts of discrimination.

It is important as well to note what this bill does not do. First, it does not change the threshold question of who is a recipient of Federal financial assistance. Therefore, if a person or entity was a recipient before this bill, they will also be a recipient after its enactment. H.R. 700 does not enlarge the category of recipients. In addition, this bill does not alter what constitutes Federal financial assistance. And lastly, and maybe most importantly, it does not alter the remedy of fund termination—it remains narrow and pinpointed.

Again, as one of the original sponsors, I want to emphasize that this is not a new or revolutionary idea or bill, but rather is, in its truer sense, a restoration based on a simple notion of simple justice.

[The opening statement of Chairman Hawkins follows:]

OPENING STATEMENT OF HON. AUGUSTUS F. HAWKINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, COMMITTEE ON EDUCATION AND LABOR

The Joint Hearing of the Committee on Education and Labor and the Subcommittee on the Judiciary is called to order. We convene this hearing this morning to continue our regional examination of H.R. 700, the Civil Rights Restoration Act of 1985. We are appreciative of the supportive presence, this morning, of both visitors and witnesses. We are confident that the exchange of information and ideas which will occur throughout the day will aid your understanding of the issue and will instruct our efforts to pass legislation which affirms this nations commitment to the eradication of discrimination throughout all sectors of our national community.

H.R. 700 provides for the restoration of four civil rights statutes to their pre-*Grove City* coverage and vitality. As most of you know, the four statutes in question are Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title VI of the Civil Rights Act of 1964. In essence, however, H.R. 700 sets forth a very simple notion—that federal dollars should not be allowed to subsidize discrimination against minorities, women, the elderly, or the disabled, and that if discrimination occurs there is a remedy available. This is not a new found or startling notion; in fact it is a view to which most people in this country subscribe and already believe exists in law.

The Civil Rights Act of 1964, the model of the other three statutes covered by H.R. 700, was by far the most significant civil rights legislation in this nation's history, and provided very simply, and I quote: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

This has been the law of the land since 1964, and until the *Grove City* decision was believed to be broad in nature and an expansive enforcement tool by which to remedy discrimination. The *Grove City* decision has changed all that, and as a result, these statutes have become the means by which institutions can so segregate their federal dollars so as to avoid any remedy for actual acts of discrimination.

It is important as well to note what this bill does not do. First, it does not change the threshold question of who is a recipient of federal financial assistance. Therefore, if a person or entity was a recipient before this bill, they will also be a recipient after its enactment. H.R. 700 does not enlarge the category of recipients. In addition, this bill does not alter what constitutes federal financial assistance. And lastly, and perhaps most importantly, it does not alter the remedy of fund termination—it remains narrow and pinpointed.

Because of the criticism which we frequently encounter, I feel that it is important to stress that this bill fosters neither new nor revolutionary ideas of civil rights law enforcement with respect to any entity subject to its prohibitions. We act, in response to an erroneous Supreme Court interpretation of our legislative intent at the time we passed the laws which that decision affects. We act to restore the broad coverage of the laws necessary to ensure that the elimination of discrimination becomes fact and not fantasy. We act in pursuit of simple justice.

We look forward to the testimony of each witness, confident that it will aid our pursuit of justice.

The CHAIRMAN. Mr. Sensenbrenner, would you like to make a comment?

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

It certainly is a pleasure being here in Los Angeles, and specifically adjacent to the University of Southern California campus, for this very important hearing.

The Civil Rights Restoration Act of 1985 is a controversial piece of legislation, but it is not controversial because of any desire on the part of anyone that the *Grove City College* decision should be reversed by Congress. President Reagan, the administration, the Republicans in the House, as well as Members of the majority party in the House of Representatives, all agree that the Supreme Court misinterpreted Congress' original intent when it rendered the *Grove City College* decision 13 months ago.

The controversy, however, revolves around whether H.R. 700 goes beyond restoring the law to its State prior to the *Grove City* decision. We have had a number of witnesses in various cities around the country, as well as in Washington, DC, who indicate that the change in the definition of what constitutes a program or activity is more expansive than the change in the definition of recipient, which was proposed last year by the Congress, passed by the House of Representatives, and then subsequently filibustered to death in the U.S. Senate.

There are three basic problems with H.R. 700. First, why does H.R. 700 propose extremely comprehensive coverage in the private sector, but a more limited coverage in the public sector? Second, the change in the pinpointing language proposed by H.R. 700 disturbs me in that it can be interpreted by a court far more expansively than the old pinpointing language. And third is the problem of whether including a college or university that accepts guaranteed student loan students but receives no other Federal financial assistance under the coverage of these four statutes will, in effect, deny access by qualified minorities and handicapped students for admission into programs in the college or university simply because the college or university does not want to bring itself under the Civil Rights Act. And if we changed the law and attempt to do that, it will simply say that we will close the door to these students rather than being under the requirements of all kinds of Federal red tape.

So I would hope that the witnesses today would read the bill and would respond to those particular questions because, unless these questions are answered, I would predict that H.R. 700 would meet the same fate as its predecessor in 1984.

I thank the Chairman.

The **Chairman**. Thank you.

Mr. Jeffords, do you wish to make a statement for the minority of the Education and Labor Committee?

Mr. **Jeffords**. Mr. Chairman, thank you very much. I appreciate very much being here in Los Angeles so that we may get a perspective from this area on the legislation which we are considering.

I have a statement I would appreciate being put in the record. I will just make a couple of comments, Mr. Chairman.

The **Chairman**. Without objection, it will be put in the record.

Mr. **Jeffords**. I would agree with both the previous speakers. On the one hand, it is incredibly important in my mind as one of the original sponsors of this legislation that we move expeditiously and that we attempt to deliver a comprehensive bill, but a bill which can be at least endorsed, and hopefully with no modifications by the Senate, as soon as possible. But that may not be easy to do. I am hopeful that we will be able to find answers to some of the problems that have been raised so that we do reinforce the original intent of the legislation prior to the *Grove City* decision, and yet not give ourselves more problems such that we will end up with a stalemate again in the Senate.

So I appreciate very much being here, Mr. Chairman, and I look forward to hearing from the witnesses.

The **Chairman**. Thank you.

[The prepared statement of Hon. James M. Jeffords follows:]

Statement of Representative James M. Jeffords, Field Hearing in Los Angeles, CA, Civil Rights Restoration Act of 1985

On the day we introduced this bill in January, I noted with pride that it was the first piece of legislation I was introducing after being designated the Ranking Republican Member of the Education and Labor Committee. I also said at that time—and I would like to repeat today—that I am even more proud as a Vermonter to be one of the original sponsors of this much-needed legislation, as I was last year.

Vermont has been a leader in this field going back to our State's earliest history. Vermont was the first State to do away with slavery. It was the first State to allow women to vote. It was the first State to pass workmen's compensation. These are among many of our "firsts."

From an even more personal standpoint, I am also pleased to be strongly encouraging passage of legislation to ensure that the rights of women are not abridged in any way because my grandmother was an activist on women's issues back at the time of the women's suffrage movement.

I believe it is vitally important that we act expeditiously on this bill. It seeks only to restore rights previously granted by Congress and revoked by an overly narrow interpretation of the phrase "program or activity."

Legislation having the same purpose was overwhelmingly approved by the House last year and, unfortunately, stymied in the Senate. I hope passage of legislation to reassert the intent of Congress that coverage under these civil rights laws be broad and comprehensive comes as quickly as possible. At the same time, I also know that we welcome the views of those who will testify today and at future hearings who may have some suggestions for improving the bill. It should be helpful to us in our deliberations to hear all views on these issues.

Although we may not agree on exactly what form this legislation should take, I believe there is widespread agreement that there is an overriding need for Congressional action to make it undeniably clear that we forbid discrimination financed by federal dollars.

The **Chairman**. Mr. Hayes, do you wish to make a statement.

Mr. **Hayes**. Thank you, Mr. Chairman. I will be very brief. I realize that I shouldn't use up the time that should be set aside for our witnesses here. I see we have a rather impressive list.

I am thankful for the opportunity to be here again on the west coast to hear the expressions from people in the academic field, and particular those from the civil rights field who were witnesses in other places, and yes, maybe members of student bodies who might be concerned about the whole issue of civil rights as it relates to H.R. 700.

I must say it is an extremely important piece of legislation. There could be real problems though, given the direction our country is going on the issue of civil rights. I just want to hear the witnesses and I may, as usual, have some questions and comments following their testimony.

The CHAIRMAN. Thank you.

The Chair will call the first witness this morning. It is a distinct pleasure to have as the opening witness not only one of our most distinguished Members of Congress, but a Member from one of the adjoining districts, the Honorable Mel Levine, a Member of Congress from Santa Monica, CA, the 27th Congressional District. Mel, it is a pleasure to have you. This time is yours.

We will insert in the record all of the prepared testimony and, if you wish to deal with it in its highlights, we would appreciate it.

STATEMENT OF HON. MEL LEVINE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LEVINE. Mr. Chairman, thank you very much.

Let me join you, Mr. Chairman, in welcoming the other members of the committee to southern California.

I am honored to be your lead witness. I am very grateful to you, Mr. Chairman, and to each of the members who have traveled so far to participate in this hearing here in southern California on a subject of such great importance. Further, it is an honor for me to be here testifying on this specific piece of legislation for which I believe you are to be commended, our California colleague, Mr. Edwards is to be commended, and the other people who have been so involved in the development of this extremely important bill.

I should also mention that last summer, sitting only a few hundred yards from this very spot watching the Olympics here in Los Angeles, how thrilled I was that so many American women athletes were able to compete so successfully and obtain international recognition of their talents.

It is especially relevant to note that at this hearing, that the United States was able to enter such a qualified team of women in the 1984 Olympics largely due to the effects of title IX of the Education Amendments of 1972, which barred discrimination in women's collegiate athletics. To quote Cheryl Miller, the captain of the gold medal winning U.S. Olympic women's basketball team, who is here with us today, "Without title IX, I wouldn't be here." Frankly, Mr. Chairman, I think that says a lot about the importance of your legislation and the importance of expediting it.

Mr. Chairman, I am proud to be a part of the tradition of defending civil rights in America. I am proud that, as a country, we have gone beyond a time when Federal tax dollars could be used to discriminate against some of the same U.S. citizens who paid those taxes. President John F. Kennedy referred to the concept that taxes paid by all should not be used to discriminate as simple justice, and it is this tradition of simple justice which you yourself referred to in your opening remarks and that I am here today to support as strongly as I can.

The concept that Federal tax dollars must not be used in programs that discriminate has led to the passage of four great civil rights laws. The Civil Rights Act of 1964 was the first to be passed. Title VI of this act prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving Federal financial assistance. This penalty of losing Federal funding was the key to the elimination of black and white segregated school systems during the 1960's.

Title IX of the Education Amendments of 1972 was the next of these civil rights laws to be passed prohibiting discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. This law and the enforcement it provides led to vastly increased opportunities for women in athletics, employment, and professional programs in colleges and universities receiving Federal funding.

The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in any program or activity receiving Federal assistance and, most recently, section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in any program or activity receiving Federal assistance.

These statutes together, as this committee knows, form a body of protection for minorities, women, handicapped, and older Americans by providing a significant incentive for federally funded institutions to avoid discriminatory policies. But because important sections of all four laws are similarly worded, weakening any one of these vital laws weakens them all in reducing the protection Congress originally intended that these laws provide.

Mr. Chairman, as you and the other committee members are aware, these laws have already been weakened by the Supreme Court decision in *Grove City* and the subsequent decision in *Consolidated Rail Corp.* In these decisions, the Court chose to substantially limit the scope of title IX so that only the specific program or activity, rather than the entire institution, is prohibited from discrimination. For example, if a university receives Federal loan assistance to build student housing, the university cannot discriminate in its housing program. However, other programs, such as athletics or computer science, if they do not receive Federal funds, could still refuse or limit admissions to qualified women. In fact, to carry this example further, due to the parallel wording of the civil rights laws, these or any other programs that did not receive Federal funding at this university could also discriminate against qualified minority, disabled and older students.

Due to the Supreme Court decision to limit the coverage of these Civil Rights Acts, gone are the days when a minority child can expect equal opportunities within the concept of simple justice in his or her classroom. Female students can again lose opportunities to participate in high school vocational programs. Universities are no longer prohibited from tracking men and women into traditionally role-defined programs, costing both sexes priceless educational opportunities. Non-federally funded hospital wards and health service agencies can discriminate against minorities or the elderly, resulting in substandard health care. Qualified disabled adults stand to lose job opportunities and potential income. Not only do the individuals who suffer the direct effects of discrimination lose in these cases, but society as a whole loses the full potential of many of its members.

The penalty of Federal funding loss, deliberately included in these civil rights laws, while actually rarely enforced, provided the very strong incentive to avoid discrimination. It is this enforcement ability that has been weakened by the Supreme Court decision. Already, Mr. Chairman, the Department of Education has ceased work on over 40 cases of alleged discrimination in response to *Grove City*. Your bill, H.R. 700, is needed to restore the full strength and scope of all four civil rights laws that protect American citizens against discrimination. H.R. 700 is doubly important because it restores all four of the civil rights laws rather than leaving any segment of the population unprotected.

I believe, Congressman Sensenbrenner included in his opening remarks, and majority of Congress acknowledges, that the new, narrow interpretation of these key civil rights statutes, is a terrible step deterioriation for justice in America. It is my respectful submission, Mr. Chairman, that H.R. 700, of which I am pleased to be a cosponsor, seeks to reinstate the full protections that Congress originally intended for these laws. I am here as your colleague to urge full support from all of our Members on both sides of the aisle for this important legislation.

The tradition of simple justice must not be lost. Your bill, Mr. Chairman, will be a major step in its restoration. Thank you very much.

[The prepared statement of Hon. Mel Levine follows:]

Prepared Statement of Hon. Mel Levine, a Representative in Congress From the State of California

Mr. Chairman, members of the committees, it is an honor for me to be here today to testify in support of H.R. 700, the Civil Rights Restoration Act of 1985. I wish to thank the committee for holding these hearings across the country to listen to the concerns of those who will be most affected by this issue.

I also wish to mention how thrilled I was last summer to be able to watch the Olympics, held here in Los Angeles, where so many American women athletes were able to compete so successfully for international recognition of their talents. It is relevent to note in these hearings that the United States was able to enter such a qualified team due to the effects of title IX of the Education Amendments of 1972 which barred discrimination in women's collegiate athletics. To quote Cheryl Miller of the gold-medal winning U.S. Olympic Women's basketball team, "Without title IX I wouldn't be here."

Mr. Chairman, I am proud to be part of the tradition of defending civil rights in America. I am proud that as a country we have gone beyond a time when Federal tax dollars could be used to discriminate against some of the same U.S. citizens that paid those taxes. John F. Kennedy referred to the concept that taxes paid by all should not be used to excluded any as "simple justice" and its is this tradition of simple justice that I am here today to support.

The concept that Federal tax dollars must not be used in programs that discriminate has led to the passage of four great civil rights laws. The Civil Rights Act of 1964 was the first to be passed. Title VI of this act prohibits discrimination on basis of race, color, or national origin in programs or activities received Federal financial assistance. This penalty of losing federal funding was the key in eliminating separate black and white school systems during the 1960's. Title IX of the Education Amendment of 1972 was the next civil rights law to be passed. Title IX prohibits discrimination on the basis of sex in any education program or activity receiving

Federal financial assistance. This law, and the enforcement it provides, have lead to vastly increased opportunities for women in athletics, employment, and professional programs in colleges and universities receiving Federal funding. The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in any program or activity receiving Federal assistance. And, most recently, section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in any program or activity receiving Federal assistance. These statutes together form a body of protection for minorities, women, handicapped and older Americans by providing a significant incentive for federally funded institutions to avoid discriminatory policies. But because important sections of all four laws are worded similarly, weakening of one of these vital laws weakens them all reducing the protections congress originally intended these laws to provide.

Mr. Chairman, as you and the other committee members are aware, these laws have already been weakened by the Supreme Court decision *Grove City College* v. *Bell* and the subsequent decision *Consolidated Rail Corp.* v. *Darrone*. In these decisions the Court choose to substantially limit the scope of title IX of the Education Amendments and section 504 of the Rehabilitation Act so that only the specific program or activity, rather than the entire institution, is prohibited from discrimination. For example, if a University receives Federal loan assistance to build student housing, the University cannot discriminate in its housing program. However, other programs such as athletics or computer science—if they do not receive federal funding—could still refuse or limit admissions of qualified women. In fact, to carry this example further, due to the parallel wording of the civil rights laws, these or any other programs that did not receive Federal funding at this university could also discriminate against qualified minority, disabled and older students.

Due the Supreme Court decision to limit the coverage of these civil rights acts, gone are the days when a majority child can expect equal opportunities in his or her classrooms. Female students can again lose opportunities to participate in high school vocational programs. Universities are no longer prohibited from tracking men and women into traditionally role-defined programs, costing both sexes priceless education opportunities. Non-federally funded hospital wards and health service agencies can discriminate against minorities or the elderly resulting in substandard health care. Qualified disabled adults stand to lose job opportunities and potential income. Not only do the individuals who suffer the direct effects of discrimination lose in these cases, but society as a whole loses the full potential of one of its members.

The penalty of Federal funding loss, deliberately included in these civil rights laws, while actually rarely enforced, provided the strong incentive for institutions to avoid discrimination. It is this enforcement ability that has been weakened by the Supreme Court decision. Already the Department of Education has ceased work on over 40 cases of alleged discrimination in response to *Grove City College* v. *Bell*. H.R. 700 is needed to restore the full strength and scope to all four civil rights laws that protect American citizens against discrimination. H.R. 700 is doublely important because it restores all four of the civil rights laws, rather than leaving any segment of the population unprotected.

The new, narrow interpretation of these key civil rights statutes is a terrible step backwards for justice in America. H.R. 700, of which I am a cosponsor, seeks to reinstate the full protections that Congress originally intended for these laws. I urge full support from all Members of Congress for this important legislation.

The tradition of simple justice must not be lost.

The CHAIRMAN. Thank you, Mr. Levine, for an excellent, concise, and very articulate statement. We appreciate it.

The Chair would like to interrupt, if we may, Mr. Levine, to introduce one of our colleagues, who has come in since the opening, Mr. Dixon, from the adjoining district. Mr. Dixon and I have alternated districts. I think that currently we are in my district. A few months ago it was his district. So we share the district together. Would you like to make a statement, Mr. Dixon?

Mr. DIXON. Thank you very much, Chairman Hawkins.

I am delighted to be here for the hearings on H.R. 700. I do not serve on your committee nor the Judiciary Committee, but in the last session of Congress I took an active interest and role in developing legislation similar to this. Unfortunately, it did not pass out of the Senate. I am very hopeful that the Restoration Act of 1985 will pass both Houses.

I am just pleased to be back in your district. I really feel that these hearings will put a great deal of emphasis on moving this legislation.

The **CHAIRMAN**. Thank you.

Mr. Levine, if the Congress fails to act to modify the law as it is interpreted by the court in the *Grove City* decision, is it your sense that the Nation will experience an erosion of the gains of the past 20 years?

Mr. **LEVINE**. Mr. Chairman, it is my definite sense that if this Congress fails to act to alter the *Grove City* decision, people who have justifiably looked to the statutes for the elementary concepts of fairness will suffer an enormous setback, and it will be quite damaging to the social fabric of this country.

The **CHAIRMAN**. So, in effect, civil rights are actually on the line.

Mr. **LEVINE**. Definitely so, Mr. Chairman.

The **CHAIRMAN**. Thank you.

Mr. Sensenbrenner.

Mr. **SENSENBRENNER**. Thank you, Mr. Chairman.

Congressman Levine, let me commend you for a rather all-encompassing statement.

One of the reasons we are here today is because Congress did a sloppy drafting job 13 years ago in passing title IX so that the court was not given direction as to exactly what the intent of Congress is. I am afraid that if we do an equally sloppy drafting job this time around, there will be another *Grove City* type decision that would arise from whatever response Congress makes to last year's case.

I have a couple of questions. First of all, in the text of the bill, it is quite obvious that the coverage in the private sector is substantially greater than the coverage in the public sector. For example, in the public sector, if the police department receives Federal funds, it is covered, but not the health department of the same city. In the private sector, however, both independent contractors and franchisees are covered, so that if a Hardware Hank Store, for example, in one part of the country gets a Small Business Administration loan to build the shop, then all of the other Hardware Hank franchisees, which are all separate corporations all around the country, would also be covered.

Now why is the coverage so significantly greater in the private sector than in the public sector?

Mr. **LEVINE**. Mr. Sensenbrenner, perhaps I could inquire of counsel before responding to your question, because it was my understanding that H.R. 700 was not as broadly defined in the private sector as you have indicated that it is. I understand that, in the private sector, H.R. 700 only dealt with entities within the scope of the same general employing agency. Perhaps I could just address that to counsel, and then try to respond.

Mr. **SENSENBRENNER**. If I can respond to that, the amendment that is proposed to each of the four major civil rights statutes in the private sector contains three criteria. And then on the bottom, it says "and any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraphs 1, 2 or 3." If that isn't a wide open invitation for judicial creativity, I don't know what is.

There is not a similar coverage in the public sector. It is department by department for State and local government, and for higher education it is campus-wide or university system-wide.

I don't have a complaint with how it is defined in the public sector. I do think that we are asking for trouble using the "any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraphs 1, 2 or 3" in the private sector.

The **Chairman**. Could the Counsel answer the request of the witness?

I call on Counsel who participated in the drafting of the proposal to clarify specifically the intent, as well as what we understand to be the purpose, of H.R. 700, at the request of the witness. Mr. Ed Cooke.

Mr. **Cooke**. Congressman Levine, your general interpretation is correct. It is not and was not the intent of us in drafting this piece of legislation to cover franchisees. The catch-all section was specifically worded, and we assume narrowly worded, with the assistance of legislative counsel, to ensure that it would not pick up any entity which was greater than the entities defined in subsections (1), (2), and (3). Therefore, it is our sense that franchisees and comparable kinds of entities would not be picked up by that.

Mr. **Levine**. If I might in response to the question just simply say the following. Frankly, counsel's interpretation is consistent with the understanding that I had of the intent of the bill.

Mr. Sensenbrenner, if there is a potential ambiguity in the drafting of the catch-all section as you indicated which would imply a broader reach than was intended, I would think that it would be constructive and sensible to sit down and work with that language to ensure that it, in fact, reached only as far as counsel has indicated was intended to be reached in the drafting. However, it certainly sounds to me like the intent, and I would hope the scope, of the private and public sector language is similar.

Mr. **Sensenbrenner**. Let me respond to what you said. I don't approach this subject in a hostile manner. I did cosponsor last year's bill. However, I think that this year's bill is more expansive than last year's bill which, as we know, passed the House and was killed in the Senate. I don't want to see another year pass without some type of remedial legislation overturning the court's decision and *Grove City* being enacted into law.

But I have read the relative language of the bill. It says, "For purposes of this section, the term 'program or activity' means all of the operations of," and then it goes down and lists three paragraphs. The first two paragraphs are limiting the scope of the bill to State and local government and in higher education. But there is no such limiting language in the private sector. My concern is that, unless we are specific, we are simply asking for a stream of litigation and perhaps another misinterpretation of the intent of Congress.

Mr. **Levine**. My reaction to your comment and question is twofold. First, of all, it is very clear both from your opening remarks, from your voting record and from your comments here that you do approach this issue with the intent of developing successful and workable legislation. I think our objectives are the same in that regard, and that bodes well for this process.

I don't believe that there is any intent—and counsel's comments, frankly, corroborate this assumption of mine—to leave the type of potentially overbroad interpretation that you read into the private sector component of the legislation. I would think that the most constructive thing to do would be to sit down and attempt to ensure that the intent, as articulated by counsel, is reflected in language that we all agree upon.

Mr. **Sensenbrenner**. I would hope so, too. But last year we were not allowed to propose amendments. They were all shot down. Anybody who proposed amendments was guilty of a heresy against civil rights. I would hope that we would approach the subject of amendments to clarify the intent of Congress a bit more constructively this year.

I thank the chairman.

The **Chairman**. May the Chair assure the gentleman, Mr. Sensenbrenner, that that is the spirit in which we are trying to approach the problem this year, as long as these two committees have any control over it. I think we do. It certainly will be in that spirit, and we certainly appreciate his contribution.

Mr. Hayes.

Mr. Hayes, this does not apply to you personally, it is just a general statement. The Chair is going to try to enforce the 5-minute rule in order to allow all of the members an opportunity to question all the witnesses. You are one of the briefest ones, so I could say that prior to your statement.

Mr. **Hayes**. I don't want to question my colleague, Mr. Levine. I just want to make this comment. I don't want it to appear that the Supreme Court made the decision with regard to *Grove City* just based on the faulty drafting of the legislation some 13 years ago. I think if we check the actions of the Supreme Court, you will see that there is a general trend to deemphasize the issue of civil rights. There are other areas that go beyond just H.R. 700 that would indicate that this is a consistent pattern in this direction. I see H.R. 700 as one means to maybe change that course of action or that pattern. I just wanted to make that comment.

Thank you, Mr. Chairman.

The **Chairman**. Thank you.

Mr. Jeffords.

Mr. **Jeffords**. Thank you, Mr. Chairman.

So the record is clean in all respects, I will retroactively cede most of my 5 minutes to my partner on the right here, and just make a brief statement.

In my view, Mr. Sensenbrenner is quite correct. It is incredibly important for us to ensure that we have the record which you are helping to build here today to demonstrate very clearly to any subsequent court action that is exactly what was intended. I would agree also that we must go forward with the idea of being able to come with a bill which can be passed this year all the way along and endorsed, hopefully, by the administration so that we end these problems and not end up with the problems we had last year.

You did an excellent job both in your statement and in your clarifying answers.

Thank you very much.

Mr. LEVINE. Thank you.

The CHAIRMAN. Mr. Dixon.

Mr. DIXON. I have no questions, Mr. Chairman.

The CHAIRMAN. Again, Mr. Levine, thank you for your presentation before the committee.

Mr. LEVINE. Thank you very much, gentlemen.

The CHAIRMAN. The Chair will next call on a panel of witnesses. May I indicate to those whose names will be called that we would appreciate it if they would occupy the seats in the front row. We will call on the witnesses separately; however, to make it convenient and to expedite the hearing, I would appreciate that those whose names will be called will come to the front and be seated, and then we will call on them in the order as scheduled.

Mr. Raymond Johnson, president of the Los Angeles Chapter of the NAACP; Ms. Cheryl Miller, University of Southern California; Ms. Linda Sharp, the women's coach for the University of Southern California; Ms. Catherine Johns, president of the Association on Handicapped Student Service Programs in Postsecondary Education, San Diego, CA; Mr. Bill Lee, the Center for Law in the Public Interest, Los Angeles; Professor William Barclay Allen, Harvey Mudd College, Claremont; and Mr. Paul Kienel, the executive director of the Association of Christian Schools International, Whittier, CA.

Now let me call on them in the order in which their names are listed with me, Ms. Cheryl Miller being first. Ms. Miller, we appreciate your presence this morning. Some of us have watched your sports activities. To some of us, this is a new personal experience to have you before a congressional committee. I hope that you are more at ease before this committee than you have been in some other activities.

Ms. MILLER. It can be a little tougher on the court than it is here.

The CHAIRMAN. We look forward to your testimony, and we will hear from you at this time. Thank you very much.

STATEMENT OF CHERYL MILLER, UNIVERSITY OF SOUTHERN CALIFORNIA; LINDA SHARP, WOMEN'S COACH FOR THE UNIVERSITY OF SOUTHERN CALIFORNIA, LOS ANGELES, CA; RAYMOND JOHNSON, PRESIDENT, LOS ANGELES CHAPTER, NAACP, LOS ANGELES, CA; CATHERINE CAMPISI JOHNS, PRESIDENT, ASSOCIATION ON HANDICAPPED STUDENT SERVICE PROGRAMS IN POSTSECONDARY EDUCATION, SAN DIEGO, CA; WILLIAM BARCLAY ALLEN, PROFESSOR, HARVEY MUDD COLLEGE, CLAREMONT, CA; PAUL A. KIENEL, EXECUTIVE DIRECTOR, ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL, WHITTIER, CA; AND BILL LANN LEE, CENTER FOR LAW IN THE PUBLIC INTEREST, LOS ANGELES, CA, A PANEL

Ms. MILLER. Good morning, Mr. Chairman and the committee. My name is Cheryl Miller and, in the 1984 Summer Olympics, I was the captain of a gold-medal-winning women's basketball team.

Most of my teammates and I would not have been there without title IX of the Education Amendments of 1982. Most of them, like me, were attending college on athletic scholarships, something almost unheard of prior to title IX. Because of title IX, my college basketball team has excellent coaches, good equipment, facilities, and uniforms. We didn't have to sell cookies or finance our travel expenses like most of our older counterparts.

Last year I went to Washington along with fellow Olympic and disabled athletes to ask Congress to pass the Civil Rights Act of 1984. The *Grove City College* v. *Bell* decision had been issued in February that year, and we were afraid that we would begin to lose much of what we had again. At the time, the Summer Olympics had ended and the country was a little bit crazy. We had no problem getting to see Senators and having our pictures taken with them. At the time, everyone was concerned about the impact of the *Grove City* decision which concerned women's athletics, and America's glory in the Olympics fresh in everyone's mind.

It seems our fears were justified. A little over a week after the *Grove City College* decision, the Department of Education dropped sex discrimination charges against the University of Maryland's intercollegiate athletic program because the athletic program did not receive direct Federal funding. The Department of Education has uncovered discrimination in several areas, including travel per diem allowance, the provision of support services, the accommodation of student interests and abilities. Yet, because of the *Grove City College* decision, female athletes and coaches at the University of Maryland no longer have rights of equal opportunities in sports. Unless something is done to restore title IX, we won't see anything like the 1984 Olympics.

Despite all the attention we have received, Congress did not pass the Civil Rights Act of 1984. Today I am speaking in support of the Civil Rights Restoration Act of 1985. Although I am sad that we still have to have a position of having to fight to regain the rights, I am pleased to add my voice to this cause.

I would like to make one thing clear. The *Grove City College* decision spells disaster, and not just for women athletes. The *Grove City College* decision cuts back the rights of minorities, disabled persons, older people, as well as women. Unless the Civil Rights Restoration Act of 1985 is passed, our Government will be subsidizing discrimination against women, minorities, disabled people, and older Americans.

I understand that Senator Dole has introduced a bill that would restore the protection in education alone. I am deeply disturbed by that. I am not only a woman, I am a black woman. The Civil Rights Act of 1964, which was also limited by the *Grove City College* decision, is primarily responsible for ending racial segregation in hospitals, social service agencies, and housing, as well as education. Under the Dole bill, I would be protected from discrimination in college, but not in the hospital. I fail to see the justification that all federally funded discrimination is tolerable.

I am not a lawyer, as you can see and as my record has spoken. I am not knowledgeable about all the fine points in the law. I only know that after the *Grove City College* decision, I have less rights than I had before. The Civil Rights Restoration Act of 1985 will restore my rights and the rights of many Americans.

Thank you for listening to me. I need not say how important this is for me, because I come from a very large family and it would have been very tough for my family to support all the children, send them to college and get a great education, and I would not be where I am today. Thank you for listening to me and for taking this time out. Thank you very much..

The CHAIRMAN. Thank you, Ms. Miller. Let me commend you.

Let us call on your coach, and then perhaps some of the members can ask questions of the two of you.

Ms. Linda Sharp, women's coach for the University of Southern California. Ms. Sharp, obviously we are delighted to have you as a witness before this committee. Thank you for your appearance.

Ms. SHARP. Thank you.

I am very happy to be here because I have been coaching many years, and I also competed as a student athlete. In the days when I competed, there were no scholarships, there were no Equal Rights Amendments, there were no Restoration Acts. We had to go out and work to pay for our education, as our counterparts, the males, were on scholarship. So there were many discrepancies and much discrimination at that time. This is back in 1968 through 1973. When I graduated from college in 1972, title IX came into effect, and in 1974, as I departed college, women were given scholarships at the University of Fullerton where I went to school.

I think that many hardships that I went through have really given me a power or a feeling that I would like to help young people, young women, not just in the athletic area, but in education. I think that through the Federal tax dollar that I pay as a female, I think all people should share those dollars. Those dollars should not go just to men or making sure that men have all of the adequate things that they need. I think that per diem is a problem, transportation, promotional things that occur in athletics, that occur in education. I know there are many other discrepancies and discrimination going on in health care and transportation and with the elderly.

So, as a coach, as a teacher, as a former student athlete, and as a Federal taxpayer, I think that the Restoration Act of 1985 is something that should be seriously looked at and brought back into effect so that we do not have discrepancies, so that we do not have the female athlete or people not getting what they need, and to make sure their opportunities are met.

That is my closing. I just really feel very strongly about this, going through the experiences that I have gone through, seeing what title IX has done and seeing what things have been done for Cheryl Miller and other young people in this country.

The CHAIRMAN. Thank you, Ms. Sharp.

Mr. Jeffords.

Mr. JEFFORDS. Mr. Chairman, I just have one question. First of all, I think it is important that you are here to really let us know how important it is to continue with the policies that were there before *Grove City*.

Both you and your coach, could you tell me as to what indications that there have been setbacks or movements back after *Grove*

City as far as title IX goes and scholarships? I think you mentioned one, the University of Maryland was it?

Ms. **Miller**. Yes, it was.

Mr. **Jeffords**. What has been the change there, and do either of you know of any other areas where colleges have changed their policies after *Grove City?*

Ms. **Miller**. I am not quite aware of other situations that have formulated because of this decision, but I know of Maryland's loss as far as funding and as far as per diem. Now they might seem little, but it is very hard to go out and having to sell things all of the time, whereas the men are funded and they do not have to worry about going out and raising their own money. It is just little types of things like that.

Mr. **Jeffords**. Thank you.

Ms. Sharp.

Ms. **Sharp**. I feel the problems areas, for the most part, have been in the area of transportation and in per diem. When I was a college student, we had to get blue chip stamps—if you recall blue chip stamps—we had to get books together to get transportation to go to a national championship. That was a very difficult thing to do when our men were traveling by air and being paid for it through the university.

I think that per diems now at most universities are not equal, and I don't know why that has to be that way. I think that the young people today who are participating, whether it be male or female, should be there on an equal basis and treated so. But I think per diem, transportation—and transportation is an important thing, as well as per diem. We want to make sure that they travel so they are rested and are eating properly and efficiently so that they can compete and do their very best.

But I think those two areas have been the main areas that stand out, as well as looking at promotional things. I think there is much more emphasis placed on promoting men's athletics than there has been women's athletics. I feel that if there was an equal act and these kinds of things would happen, then you would see people a lot happier and people doing better jobs.

Mr. **Jeffords**. Thank you very much.

The **Chairman**. Before calling on the next member, may the Chair interrupt to introduce another one of the Members of the Congress who is in one of the adjoining districts of Mr. Dixon and mine, Mr. Dannemeyer. We are very pleased to have you, Mr. Dannemeyer.

Mr. **Dannemeyer**. Thank you, Mr. Hawkins.

The **Chairman**. Mr. Hayes.

Mr. **Hayes**. One of the questions that Congress is going to have to grapple with, as you know, is that the Federal deficit is running somewhere around $200 billion or somewhere in that area. We have a problem of trying to get to the point where we reduce that deficit, and then it becomes a problem of which way do you do it.

One of the things that I would ask your coach, since you have been around for quite some time and went to school during the period where you got no assistance, my pointed question: What would be your reaction—and this is the thing that we have to grapple with in Congress—about reducing some of the moneys we spend on military hardware and that stuff in order to be able to continue the kind of programs such as aid to schools and help people who are handicapped and women and this kind of thing? What would your reaction be if we had to take some of the money we spend on the military that we don't need in order to do this? This is the kind of thing we have to face.

Ms. **Sharp**. I know that protecting our country, and so forth, is very critical, but I feel that taking care of our people in this country with educational opportunities is something that exists in order that we have good leadership to pursue careers, professions, that we have strong leadership in this country. If we don't make sure that these people are getting that type of education and in the right means, I don't think that we will have the leadership that we need.

But I don't know how you split up the funds so that everyone is happy. I know that is a difficult thing to do.

Mr. **Hayes**. I am not trying to make people happy. I want to make sure that we do the things that are right.

Ms. **Sharp**. I know that there is always a right and there is always a wrong way. But I really don't know what to say about those dollars that have to be spent.

Mr. **Hayes**. Thank you, Ms. Sharp.

The **Chairman**. Thank you.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. No questions, Mr. Chairman.

The **Chairman**. Mr. Dannemeyer.

Mr. **Dannemeyer**. No questions.

The **Chairman**. Mr. Dixon.

Mr. **Dixon**. No questions, Mr. Chairman.

The **Chairman**. Thank you.

Again, the Chair would like to thank the two witnesses, Ms. Miller and Ms. Sharp. I understand that you have a time problem so you are excused. We were delighted to have you, and we look forward to your continued success. Being from UCLA, however, I am not sure I say that with a great deal of enthusiasm. [Laughter.]

The **Chairman**. But you are all Americans, that is for sure.

The rest of the panel will be called on to make their presentations, and then we will question them as a panel. We will begin with Mr. Raymond Johnson, president of the Los Angeles NAACP.

Mr. **Johnson**. Good morning, Chairman Hawkins and members of the joint committee. My name is Attorney Raymond L. Johnson, Jr., and I am president of the Los Angeles Chapter of the National Association for the Advancement of Colored People. The Los Angeles branch is over 50 years old and is comprised of more than 10,000 active members of all races, religions and creeds.

Thank you for this opportunity to speak in support of speedy passage of H.R. 700, the Civil Rights Restoration Act of 1985.

We understand that the February 28, 1984 Supreme Court decision in *Grove City College* v. *Bell* requires Congress to restate and reaffirm the broad coverage of our major civil rights laws: title VI of the Civil Rights Act of 1964 regarding race, color and national origin; Title IX of the Education Amendments of 1972 regarding sex discrimination, and the subject of *Grove City College*; section

504 of the Rehabilitation Act of 1973, regarding the disabled; and the Age Discrimination Act of 1975.

The court held in *Grove City College* that title IX and its prohibition against sex discrimination applied only to the financial aid office of the college. The broad interpretation of the scope of the coverage of all four statutes was thus put in jeopardy by this narrow construction since all four of the major civil rights statutes are in some way modeled after title VI of the Civil Rights Act of 1964.

The purpose of title VI is as stated in the 1964 U.S. Code Congressional and Administrative News, page 2510:

> The policy underlined the enactment of Title VI is so fundamentally correct that there is little need for an additional statement in his behalf.
>
> Section 601 concisely announces this policy, which must be the policy of the Government of the United States and all its citizens to support the Constitution.

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The policy, in other words, is that Federal financial assistance shall not be used to subsidize unlawful discrimination.

Title VI has been employed by private litigants also. It has been, as conceived, an enforcement tool for the end of segregation, further and higher education—examples would be seen in *Bob Jones University* v. *United States,* and *Bolgia Parry School Board* v. *Lemon.* Title VI has been used in housing cases, such as *Clients Counsel* v. *Samuel R. Pierce.* Title VI has similarly been used in conjunction with the Revenue Sharing Act to challenge the alleged discriminatory allocation of municipal services.

The statistics are clear that desegregation has occurred. Although racial isolation persists in many cities in our Nation, the National Education Association special study of May 17, 1984, found:

> In 29 States fewer than one-fourth of the Hispanic students were in predominantly minority schools in 1980. In the Nation as a whole, from 1968 to 1980, black students in schools with 90 percent to 100 percent minority enrollment dropped from 5 percent to 33 percent. In the West during these years, the proportion of black students and predominantly minority schools decreased from 51 percent to 33 percent. And in the South, it can be said that the dual school system has ben very nearly eliminated. In 1968, throughout the southern States, 78 percent of black students were in schools with 90 percent to 100 percent black enrollment; in 1980, this proportion of black students had decreased to 23 percent.
>
> The fact is, many communities throughout the country have successfully desegregated their public schools. The processes of desegregation have never been without trauma, and are not without problems. But citizens in many desegregated school communities—parents, school officials, teachers, students—unhesitantly point to the educational and social benefits of desegregation.

We know that title VI, even supported by title VIII of the Civil Rights Act of 1968, Fair Housing Act, has not eliminated housing discrimination. But we don't feel that that can be blamed totally on title IX of the Civil Rights Act. In view of that, there has been a lack of investigation and commitment on the part of the administration to decrease the number of title VI complaints.

In the history of the fight to eliminate racial or national original segregation, the scope of coverage of nondiscrimination prohibition has been institutionwide. The vast majority of school segregation cases involve the board of education, the school district and the governing bodies. I cite to this committee *Lau* v. *Nichols*. Also, in the most narrow of cases, the oft-cited fund termination case, *Board of Public Instruction of Taylor County* v. *Finch*, the court said the Federal funds may terminated if the result of their use is to impermissibly discriminate an even non-Federal program of the recipient. Title IX is critical to school desegregation under the Federal court order. The integration of universities from the graduate of professional schools to the undergraduate schools is legend.

For a history of racial and national origin discrimination in the Los Angeles Unified School District, which includes Los Angeles and 10 other independently incorporated cities, and a court finding on State grounds of unlawful discrimination, I refer this joint committee to "A Generation Deprived, Equal Education, Los Angeles School Desegregation," a report to the U.S. Commission on Civil Rights, May of 1977. A 1971 enrollment survey by HEW found, the Commission said, the Los Angeles School District to be the most segregated in the entire country, with 86.6 percent of black pupils attending schools which were more than 80 percent black. In particular, that is stated on the report at page 8. The Commission noted the lack of vigorous enforcement of title IX of the Civil Rights Act of 1964 by the Federal Government.

It is appropriate to overturn that part of *Grove City College* which would bring about a result contrary to 20 years of enforcement of title IX. It is mandatory that Congress restate the institutionwide interpretation of these laws. It is equally clear that, in 1964, Congress stated an across-the-board prohibition of the use of Federal financial assistance to unlawfully discriminate on the basis of race, color, or national origin. This Congress must restate that basic principle by passage of H.R. 700. It must not be lost.

Mr. Chairman and members of the committee, we appreciate this opportunity to submit our views to you and to urge speedy passage of H.R. 700 by this committee and by the Congress this year, please. Thank you very much.

The CHAIRMAN. Thank you, Mr. Johnson. We will listen to the other panel members and then question the group at that time. Thank you.

[The prepared statement of Raymond L. Johnson follows:]

PREPARED STATEMENT OF RAYMOND L. JOHNSON, JR., LOS ANGELES NAACP

Chairman Hawkins, members of the joint committee. My name is Attorney Raymond L. Johnson Jr, I am President of the Los Angeles Chapter of the National Association for the Advancement of Colored People. The Los Angeles branch is over fifty years old and is comprised of more than 10,000 active members of all races, religion and creeds.

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The court held in *Grove City College* that Title IX and its prohibition against sex-discrimination applied only to the financial aid office of the college, the broad interpretation of the scope of coverage of all four statutes was potentially similarly narrowed because, in pertinent part, all four are modeled after Title VI of the Civil Rights Act of 1964.

The purpose of Title VI is to state in 1964, U.S. Code Congressional and Administrative News, Page 2510:

"The policy underlined the enactment of Title VI is so fundamentally correct that there is little need for an additional statement in his behalf.

"Section 601 concisely announces this policy, which must be the policy of the government of the United States and all its citizens to support the Constitution.

"No person in the United States, shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

The policy, in other words, is that federal financial assistance shall not be used to subsidize unlawful discrimination!

In *Guardians Association* v. *Civil Service Commission of the City of New York, US—US,* 103 Supreme Court 3221, 3226, (1983) after enactment of Title VI a presidential task force was formed to produce model Title VI regulations. Every cabinet department and 40 federal agencies adopted the regulations. Mr. Chairmen we have lived with Title VI over 20 years.

Title VI has been employed by private litigants also. It has been, as conceived, an enforcement tool for the end of segregation, further and higher education, *Bob Jones University* v. *United States,* 396 Fed. Supp. 596 (1974), 529 Fed. 2d 514 (1975) a public, elementary or secondary school, *Bolgia Parry School Board* v. *Lemon,* 370 Fed. 2d 847 (1967). Title VI has been used in housing cases such as *Clients Counsel* v. *Samuel R. Pierce,* 711 Fed. 2d 1406 (8 Cir. 1983) (against HUD and the local housing authority). Title VI has similarly been used in conjunction with the Revenue Sharing Act to challenge the alleged discriminatory allocation of municipal services.

The 15 year saga of the *Adams* v. *Bell* cases challenging HEW's lack of adequate enforcement of Title VI highlights the consistent critique of the old United States Commission on Civil Rights findings that the federal effort at desegregation is flawed.

The statistics are clear that desegregation has occurred. Although racial isolation persists in many cities in our nation, the National Education Association Special Study of May 17, 1984 found:

"In 29 states fewer than ¼ of the hispanic students were in predominantly minority schools in 1980. In the nation as a whole, from 1968 to 1980, black students in schools with 90% to 100% minority enrollment dropped from 5% to 33%. In the west, during these years, the proportion of black students in predominantly minority schools decreased from 51% to 33%. And in the south, it can be said that the dual school system has been very nearly eliminated. In 1968, throughout the southern states, 78% of black students were in schools with 90% to 100% black enrollment; in 1980, this proportion of black students had decreased to 23%.

"The fact is, many communities throughout the country have successfully desegregated their public schools. The processes of desegregation have never been without trauma; and are not without problems. But citizens in many desegregated school communities—parents, school officials, teachers, students—unhesitantly point to the educational and social benefits of desegregation."

We know that Title VI even supported by Title VIII of the Civil Rights Act of 1968, Fair Housing Act, has not eliminated housing discrimination. The Department of Housing and Urban Development has consistently been faulted for a lack of timely completion of federal investigations with its concomitant decrease in the number of Title VI complaints (report of the U.S. Commission on Civil Rights, The Federal Fair Housing Enforcement Effort, March, 1973).

In the history of the fight to eliminate racial or national origin segregation, the scope of coverage of the nondiscrimination prohibition has been institution-wide. The vast majority of school segregation cases involve the Board of Education, the School District, the governing bodies. See *Lau* v. *Nichols,* 414 U.S. 563 (1974). In the most narrow of cases, the oft cited fund termination case, Board of Public Instruction of *Taylor County* v. *Finch,* 414 44 Fed. 2d 1068 (5th Cir. 1969), the court said that federal funds may be terminated if the result of their use to impermissibly discriminate in even nonfederal programs of the recipient. Title VI is critical to schools desegregated under federal court order. The integration of universities, from the graduate of professional schools to the undergraduate schools, is legend.

For a history of racial and national origin discrimination in the Los Angeles Unified School District which includes Los Angeles and 10 other independently incorporated cities, and a court finding, on state grounds, of unlawful discrimination, I refer you to a generation deprived, equal education, Los Angeles school desegregation, a report of the U.S. Commission on Civil Rights, May 1977. A 1971 enrollment survey by HEW found, the Commission said, the Los Angeles school district to be the most segregated in the entire country, with 86.6% of black pupils attending schools which were more than 80% black. Report at page 8. The Commission noted the lack of vigorous enforcement of Title VI of the Civil Rights Act of 1964 by the federal government. Report at page 160.

It is appropriate to overturn that part of Grove City College which would bring about a result contrary to 20 years of enforcement of Title VI. It is mandatory that Congress restate the institution-wide interpretation of these laws. It is equally clear that in 1964 Congress stated an across the board prohibition of use of federal financial assistance to unlawfully discriminate on the basis of race, color, or national origin. This Congress must restate that basic principal by passage of HR 700.

Mr. Chairman and members of the Committee, we appreciate this opportunity to submit our views to you and urge speedy passage of HR 700 by these committees and by the Congress.

The CHAIRMAN. The next witness is Ms. Catherine Johns, president of the Association of Handicapped Student Service Programs in Postsecondary Education, San Diego, CA.

Ms. JOHNS. Good Members of Congress. I am honored to be here representing the Association on Handicapped Student Service Programs in Postsecondary Education, and also as a former disabled student educated prior to the passage of section 504.

I am here this morning to ask you to restore the integrity of section 504 as Congress initially intended, for, in my opinion, section 504 makes access to higher education for disabled students a right and not a privilege in this country. I am here to further affirm to you today that if the effects of the *Grove City* decision are not overcome through passage of the Civil Rights Restoration Act, the implementation and enforcement of section 504 will virtually be null and void in this Nation's colleges and universities.

How often have we all heard people say, "I am all for the handicapped and I think they all should be included in higher education, but"—and the "but" is what we have to look out for. The "but" generally turns into a discourse about one or two extreme examples of accessibility modifications which were, on the surface, excessively costly or of an overly bureaucratic interpretation of compliance requirements which created a paperwork avalanche. Unfortunately, in the last few years, these misleading and, I believe, false interpretations have been used as a rationale to question the need for all this governmental regulation, court decisions such as *Grove City* included, protecting minority groups including persons with disabilities.

There seem to be several implications about the reasons why we don't need this protection, and I am here to tell you why section 504 is so important to disabled students and what it was like for students prior to its passage.

The implications as to why we don't need it are, first of all, that the regulations are basically unnecessary because they are too bureaucratic, and further that they undermine individual initiative and, in fact, give more than equal opportunity to selected groups. The second implication seems to be that no one—schools, employers, et cetera—deliberately is malevolent and that they all want to train and hire qualified people, regardless of minority status, and will do so voluntarily without any regulation. And certainly this is cited as the case for disabled persons, since supporting the cause of the handicapped is often seen as motherhood and apple pie, as long as it doesn't cost much, we have found in the past.

In the area of disability, unfortunately, in the last few years, we have seen that, despite the fact there has been sympathy for the cause of disabled people, we have been continually faced with the argument that it is entirely too expensive to fully integrate disabled students into higher education, both in terms of the dollar costs of making our programs accessible and costs to academic standards. The costs that are cited are often the costs of making campus accessible physically, the costs of providing auxillary aids and special equipment, and the implication seems to generally be that those students who can fit in easily without major modificatons can be educated, while those who cannot simply will not be accommodated on our campuses. I believe that this overall interpretation has affected court decisions and other attempts to deregulate section 504.

I also believe that past history in our colleges and universities has grossly shown—and I will give you some examples—how these efforts have not been undertaken voluntarily and how it is absolutely critical that section 504 be maintained in its broadest intent.

With regard to postsecondary education, let's examine just a few of the examples of what it was like for disabled students seeking a higher education prior to implementation of the section 504 regulation. Students were very often denied admission to college based on arbitrary bases. The stereotypes and beliefs held by society at large about disability, and often by college officials, unfortunately, determined if a disabled student was to enter a certain field. Examples of these stereotypes were numerous, and these are real-life cases, the examples I am giving you.

Certainly disabled could not teach elementary or secondary school. I am sure many of you are familiar with Judy Human who filed suit against the department in New York to be able to teach school after being educated. How would they handle the children in a fire drill? Certainly blind people could not be engineers or scientists; it was far too dangerous to have them near any specialized equipment. Certainly deaf people could not work in heavy industry; they couldn't hear the danger whistle blow. And not only were these stereotypes and beliefs the bases on which admission was judged and disabled students were denied admission to colleges and universities, but where we were denied entrance we had no legal recourse to fight for our inclusion.

In the days prior to the implementation of section 504, one very prominent public university prohibited students who needed a personal care attendant from attending the university, regardless of their academic ability. Yet, if this were an able-bodied student who just happened to be wealthy and chose to hire a housekeeper, there was no such prohibition. Physical requirements were imposed on disabled students, and students were denied admission to the college for reasons such as inability to put on their socks. While some of us in this area got by and were educated in higher education, believe me, it was not easy and opportunities were severely limited.

In the early days, very selected groups of us got by, and we got by at selected schools. Most of the schools that were accessible—and there were very few—focused on physical accessibility and, therefore, those of us who were physically disabled and who chose an accessible school, policies included, maybe got a higher education. If you were visually impaired and you hired your own reader or you had a volunteer reader read to you, you might receive a higher education. If you were deaf, you certainly had to be able to lip-read or you may attend Gallaudet College, which is a special college for the deaf. If you were learning disabled, you were very likely to be simply left out, and if you were developmentally disabled, the idea that you had a right to any kind of ongoing education as an adult was simply unheard of. So while some of us got by, we very often had to tailor our career goals, and our choice of institutions certainly, on the basis of the few that were accessible, both physically and in terms of policies.

Most of us were counseled into the behavior sciences. And when you hear about employment, unfortunately, it is true that in some cases there are not enough qualified disabled people to be employed in the highly technical areas that we see today. That is partly because of the counseling that we received in the past. We were clearly told that we could not complete the requirements of many majors, and these were majors such as social work, education, and certainly the sciences. And we often had no legal recourse again to go back and say, "That may be your opinion, but I want a degree in this field."

I can tell you that, as a disabled person who was educated during this time, I know very often my plans had to be modified, and sometimes even abandoned, because of lack of accessibility and lack of any legal protection for me to be able to fight for my rights to higher education. I basically had to abandon plans to attend the doctoral program of my choice because the campus to which I was admitted was fully inaccessible, and the people were there who sought to make that campus accessible had to obtain injunctions for construction of accessible buildings, and threats were actually made against them before that campus became accessible. This was all prior to the passage of section 504.

I won't go into the details about section 504 and what it does for students in higher education, because I think you know that. But the key to it is program accessibility, which is a very creative concept. The one thing I would like to state is that program accessibility requires an open creative attitude and not a lot of dollars, regarding the question you asked earlier about the deficit.

We know now that, under section 504, access to college or university education based on one's academic ability has become a right for disabled students and not a privilege dependent on the attitude of the particular person that the disabled student faces, the department or the college as a whole.

As I said previously, prior to implementation of section 504, opportunities for choice of schools in higher education were extremely limited for disabled students. There were one or two colleges in the Midwest, one or two colleges on the west coast, and very few colleges on the east coast. Since 1977, we have seen significant change, and I would like to give you just a few figures for a couple of campuses as to the change in enrollments in since 1977 and the implementation of section 504.

For example, at Ohio State University in 1975—and some campuses had begun minimal programs—there were 32 students who self-identified themselves as disabled students; in 1984, there were 662 students, including a significant number with specific learning disabilities. At Stanford University in 1979-80, which is when section 504 implementation began, when they drew up their transition plan and did their self-evaluation, they had 6 students; in 1984, they had 57 disabled students. San Diego City College, which is a community college—and in California, we have always been the leaders and had some programs prior to the passage of section 504, but we still had a lot of work to do—in 1979, there were 216 students; and in 1984, there were 489 students.

While I know that we cannot draw any direct causal relationship between the increase in students, it is my opinion and the opinion of my colleagues that there is certainly no accident that this growth, and the growth also of people to serve disabled students on college campuses, grew significantly since 1977.

I cited for you Stanford University. One thing that section 504 has done for us is it has assisted in making private colleges that receive Federal funds accessible to students with disabilities. Some that have made significant efforts are Barnard College, Harvard, the University of Chicago, and Stanford. I think this is something that, as a nation, we should be very proud of. When I went to college, I would have loved to have gone to a private college, but none were accessible and I was denied that opportunity.

I want to briefly summarize for you, just simply because I think it is very important, the reasons why disabled advocates feel that proposals to narrow section 504 and the maintenance of the *Grove City* interpretation would be most objectionable to us.

First and foremost, as you know, section 504 for us is a matter of civil rights. We believe that it puts into effect the concept of equal protection under the law for persons with disabilities. As such, it guarantees our inalienable civil rights, and its implementation, therefore, is not to be considered a matter of cost when we talk about the deficit. Rather, a democratic society such as ours, which seeks to equally protect and provide for all of its citizens, does not weigh civil rights according to cost, and the granting of civil rights for other minority groups has not been weighed according to cost, and we don't want ours weighed according to cost either. Therefore, under the democratic model, it is not socially, politically, or philosophically correct to deny equal rights to any group on the basis of cost.

The second basis on which we feel section 504 must be maintained in its broadest interpretation is the objection that attempts to narrow it are often based on the idea that it will save money. We don't believe this is true. We believe that especially in terms of higher education, educating disabled students and putting them into the work force is that something that we cannot afford not to do.

Dr. Frank Boe—I don't know if any of you know him—who is a deaf author, has written two books, "Handicapping America" and "Rehabilitating America." In it he very eloquently outlines how this apparently accelerating policy is existing where we choose to spend more dollars to keep people dependent than to spend the dollars to make people independent in such areas as making higher education accessible to disabled students.

I would like to simply close by saying that discrimination against students in higher education with disabilities was widespread prior to the legal protection granted us under section 504. Lack of physical access, and especially lack of programmatic access—and I can't stress this enough—the multiple policy barriers that existed prior to section 504, the lack of provision of auxiliary aids, these were all the norms, rather than the exception, prior to the passage.

And although discrimination still exists, and also we are certainly still dealing with the problems, public and private colleges made significant attempts to eliminate discrimination under section 504. And most importantly, with its passage, its implementation and its enforcement, equal access to higher education for disabled persons has become a right and not a privilege. I believe that it must remain this way if this Nation intends to afford equal protection under the law to its disabled students and, therefore, urge you to pass H.R. 700.

Thank you.

The CHAIRMAN. Thank you, Ms. Johns.

Our next witness is Prof. William Barclay Allen, Harvey Mudd College, Claremont, CA. We welcome you, Professor Allen.

Mr. ALLEN. Thank you.

Good morning, Honorable Chairman and the committee members. I am very happy to have the opportunity to address to you a few reflections on the impending legislation which I have been able to make.

I have given to you a statement which is longer than I am going to present to you now. I, in that statement, set forth certain of the positions I hold and some of the experiences I have had. I will bypass those because I wish to speak to you, rather, on the grounds of our common citizenship, laying aside all claims of expertise.

The CHAIRMAN. Mr. Allen, your statement in its entirety will appear in the record. You may give us the highlights, and you can be assured that your full statement will be printed in the record.

Mr. ALLEN. Excellent. I will give you the highlights. I will perhaps read a bit from the beginning, a bit from the middle and a bit from the end, with the expectation, so to speak, that you can read between the lines.

As I said, I want to speak to you rather as a fellow citizen than as an expert. I choose that ground because I wish to emphasize the importance I attach to the principles I hope to enunciate. At all events, I would hope that you would receive the opinions I offer as the candid reflections of a fellow citizen, an equal, who may express the opinions of many, but who affects to represent only himself.

Section 5 of the 14th amendment grants Congress broad powers to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion. That large grant of authority produced principles to govern legislation throughout the United States principles with which virtually we all now concur and which proscribe discrimination against all persons on the basis of race, religion, sex, et cetera. Stated positively, rather than in its usual negative listing, the principle calls for making U.S. citizenship the fundamental basis of such legitimate discriminations touching persons as the laws of our States or Federal Government may be called upon to adopt.

The exercise of Congress' power in the era through which we have lived and now hope to bring to a close has yet to live up to the high, catholic standard enunciated in ex parte Virginia. The reason for this failure in our law seems to be grounded in the felt necessity to secure the civil rightss of some citizens only, before searching for that expression of law which would guarantee the civil rights of all persons. We and our lawmakers have felt this way perhaps because the era we have lived through was initiated by a grave judicial opinion which has had profoundly unfortunate consequences.

The Supreme Court enunciated its own point of view on matters of civil rights in 1938 in the infamous *Carolene* footnote which reads as follows: ". . . prejudice against discrete and insular minorities may be a special condition, which tends to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

Over the years, we have searched so diligently for discrete and insular minorities that what began as a supposedly necessary suspension of ordinary political processes has itself turned into the ordinary—nay, the traditional—political procedure for our generations. The needs of discrete and insular minorities have turned into the demands of special interests, and our lawmakers seem often to have lost all capacity to legislate in the common interest.

On the basis of those reflections, I turn to the *Grove City* decision, and point out in passing how unique the present situation is, in that it brings to the Congress an attempt to overturn a court decision, which court decision enforced the will of Congress. Ordinarily, of course, we expect Congress to oppose the courts when the courts oppose Congress, rather than in the reverse situation.

That creates confusion, confusion which I believe stems from the fact that Congress instinctively years to rediscover those ordinary political processes which would assure the civil rights of all persons without turning the Federal Government into a cloying, oppressive overseer of all the most ordinary behaviors of the American people. By making the title IX cutoff of Federal funds program-specific rather an applying to entire institutions or governmental entities, Congress instinctively declined to intrude massively into realms where individual decisions and litigation ought to prevail.

At the same time, however, the very existence of title IX, the inclination to treat women as a discrete and insular minority reveals great uncertainty about the extent to which Congress is willing to trust private decisions in these matters. Accordingly, Congress has sought a regulatory, instead of a judicial, resolution of these difficulties, ignoring the caution of Alexander Hamilton's gloss on the Constitution, "the words 'due process' have a precise technical import, and are only applicable to the process and proceedings of the courts of justice. They can never be referred to an act of the legislature."

In response to the situation created by this predicament and Hamilton's warning, I then discuss certain consequences of the

Grove City bill. I offer several examples. I suggest the question in this Grove City bill is whether we in this country are not yet ready to trust the citizens again to provide for themselves. We all know there have been times when the ordinary recourse to the legal process has been unavailing, though perhaps never to so extreme a degree as some partisans might imagine. For that reason, Congress in the past has often undertaken to bring alternative means to the defense of civil rights. How many of us, however, continue to believe that that describes our situation now? And grant that it were, how many of us then would think it preferable to create instruments of regulatory coercion such as the Department of Education, instead of empowering the Justice Department to enter the causes of individuals in order to vindicate their civil rights.

I offer you several specific examples in the course of my prepared testimony. I will not read them all now. I will point out, however, that in one of them, that drawn from my own situation in the Claremont Colleges, a unique situation on American higher education, I, in my humble reflections on this, find it impossible to refute the nightmare which is produced in considering the impact of the bill. And I shall be most grateful if indeed the committee and the Congress can offer me a refutation of the example I suggested there.

I also, of course, offer other examples of the difficulties created by this legislation. My examples may seem to suggest that the difficulty of defining adequately the reasons for coercing an institution's programs or activities is the major defect in the proposed legislation. That has been the concern of many others who have come before you. I aim, however, rather more to know what constitutes Federal financial assistance on the one hand, and whether we are confortable, in fact, with our current notions of racial, religious and sexual equality on the other hand.

In the first case, the question is whom do we intend to aid when we offer loans and grants for scholarships to needy students? Further, whom do we punish when we limit the accredited institutions at which they may expend these moneys? Following the reasoning of Hogan, do we actually intend that women's colleges will no longer admit needy students? Or do we prefer Powell's inclination to treat women as a discrete and insular minority, and thus only to bar the admission of needy students into men's college's? Closer still to home, am I to understand that, were I to die tomorrow, the Social Security benefits which my children would expend on their education should expose the institutions which admit them to a blanket of Federal regulations? Is there never a point when moneys received in the form of Federal financial aid becomes truly our own to spend as we wish? Is it merely on loan from the Government? Are we ourselves, ultimately, merely on loan from the Government in the eyes of the bill's supporters?

Already we cannot measure how many needy students have failed to apply to Grove City College because of its catalog declaration that they cannot bring their ADS Pell grants with them. That would be very well if the question of Federal grants did not exist. I believe, as Grove City has shown even in the present discouraging environment, that those very funds would even now be contributing to educate needy students at Grove City and elsewhere if they were not engrossed by the Federal Government. But the Government does have the money, and I can see nothing we gain by using it to punish not only needy students, but, in the present proposal, even broader classes. I know of nothing we gain, but of a great deal we lose, the very least of which stems from an arbitrary and unjust narrowing of the range of choices available to our citizens.

I then disagree with the president of Grove City College who came before you to plead that you leave some institutions free, suggesting that there is no longer partial freedom possible in the United States of America. Since the Reconstruction amendments were passed, we are no longer free to entertain the idea that we must suffer as a necessary evil the slavery of a part of a people. There is no threat to any American in this legislation which does not operate against the freedom of Grove City College, just as there is no threat to Grove City College which does not endanger the liberty of every American.

In closing, let me conclude with a prayer. I have laid aside claims of expertise and spoken to you as your fellow citizen. In that guise, I pray you to hear the wail of your countrymen: "It is time to let go." The Nation cannot remain permanently in the thrall of an activist government which seeks to restrain the will of the society to paths of abstract social policy. It is time to let go, that we may govern ourselves, freely contracting with one another, defining for ourselves the means whereby we pursue legitimate ambitions, restrained only by our mutual regard to preserve to one another a freedom no less complete than we demand for ourselves. Not by law, but by self-exertion and morality, can we achieve the blessings of liberty. By law we safeguard our liberty, to be sure, but the uses to which we put it, the results of our liberty, must be the work of the people themselves, acting through countless individual decisions. Congress cannot ordain a suitable result for the exercise of our liberties. My legislating in such a manner as to prescribe the most minute details of social and business interactions, Congress grips in a stranglehold that freedom we claim as a birthright. It is time to let go while the Government of this country is still free to let go.

Let me say, finally, that one of those things I hope you read between the lines is that I do not ask you to amend this legislation, but to reject it.

Thank you.

The CHAIRMAN. Thank you, Professor Allen.

[The prepared statement of W.B. Allen follows:]

PREPARED STATEMENT OF W.B. ALLEN, PROFESSOR OF GOVERNMENT, HARVEY MUDD COLLEGE, CLAREMONT, CA

To the honorable chairman and committee members, thank you for this opportunity to address to your attention aspects of the proposed legislation, "The Civil Rights Restoration Act of 1985," which have seemed to me worthy of further deliberation. I am professor of government at Harvey Mudd College in Claremont, California. I have also served as president of our Board of Education in the Claremont Unified School District. I serve presently on the National Council on the Humanities, and only recently I have assumed a membership on the California State Advisory Committee to the United States Commission on Civil Rights. I am also, finally, a member of the Board of Directors of Leroy's Boys Home. My professional work has concentrated on principles of political philosophy, and above all on the founding principles and development of the United States Constitution. My civic involvements have to a considerable degree focused on questions of education, civic and academic.

That said, permit me, I pray, to lay aside all claims of expertise. I prefer to recur to the grounds of our common citizenship. By addressing you from that higher ground, I would emphasize the importance I attach to the principles I hope to enunciate. At all events, I would hope that you would receive the opinions I offer as the candid reflections of a fellow citizen, an equal, who may express the opinions of many but who affects to represent only himself.

THE LAW

Section 5 of the Fourteenth Amendment grants Congress broad powers "to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against state denial or invasion." [*Ex Parte Virginia*, 100 U.S. 339,346 (1879).] That large grant of authority produced principles to govern legislation throughout the United States, principles with which, virtually, we all now concur and which proscribe discrimination against all persons on the basis of race, religion, sex, etc. Stated positively, rather than in its usual negative listing, the principles calls for making United States citizenship the fundamental basis of such legitimate discrimination touching persons as the *laws* of our states or federal government may be called upon to adopt.

THE POWER

The exercise of Congress' power in the era through which we have lived and now hope to bring to a close has yet to live up to the high, catholic standard enunicated in *Ex Parte Virginia*. The reason for this failure in our law seems to be grounded in the felt necessity to secure the civil rights of some citizens only, before searching for that expression of law which would guarantee the civil rights of all persons. We and our lawmakers have felt this way, perhaps, because the era we have lived through was initiated by a grave judicial opinion which has had profoundly unfortunate consequences. The Supreme Court enunciated its own point of view on matters of civil rights in 1938, in the infamous *Carolene* footnote: . . . prejudice against *discrete and insular* minorities may be a special condition, which tends to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and [which] may call for a correspondingly more searching judicial inquiry.

Over the years we have searched so diligently for "discrete and insular minorities," that what began as a supposedly necessary suspension of "the operation of ordinary political processes" has itself turned into the *ordinary*, nay traditional political procedure for our generations. The needs of "discrete and insular minorities" have turned into the demands of special interests, and our lawmakers seem to have lost all capacity to legislate in the common interest.

GROVE CITY

To consider fully the implications of the Soviet City decision and the dangerous tendency of the legislation now pending before you, we should try to recapture a view of those "ordinary political processes" which were supposed only to have been temporarily suspended in 1938 and on which the American Constitution was designed to rely to safeguard the people's liberties. Our ability to understand the preferred constitutional alternative to the legislation about which you now deliberate may be related to our ability to see how extradordinary the present situation is: the Congress takes up the legislation designed to overturn a Supreme Court decision, the substance of which was enforce the will of Congress. It was Congress that wrote in the "program-specific" language of Title IX, and the Grove City opinion did no more than take that language literally. Ordinarily, we would expect Congress to react when the Court speaks in opposition to the will of the legislative. The present unique situation suggests that the will of the legislature is scarcely clear to Congress itself.

I believe that the reason for this confusion is that Congress instinctively yearns to rediscover those "ordinary political processes" which would assure the civil rights of all persons without turning the federal government into a cloying, oppressing overseer of all the most ordinary behaviors of the American people. By making the Title IX cutoff of federal funds program-specific rather than applying to entire insitutions or governmental entities, Congress instinctively declined to intrude massively into realms where individual decisions and litigation ought to prevail. At the same time, however, the very existence of Title IX, the inclination to treat women as a "discrete and insular minority," reveals great uncertainty about the extent to which

Congress is willing to trust private decisions in these matters. Accordingly, Congress has sought a regulatory instead of a judical resolution of these difficulties, ignoring the caution of Alexander Hamilton's gloss on the Constitution: "the words 'due process' have a precise technical import, and are only applicable to the process and proceedings of the courts of justice. They can *never* be referred to an act of the legislature."

Congress persists in spite of this warning. The reason for this, it seems to me, is that to minds trained only to view their fellow citizens through the lenses of special interests, it is ultimately impossible to comprehend in what way private decisions can operate so as to assure a perfect equality of civil rights for all persons. Nevertheless, those ordinary political processes set aside by the Court in 1938 were designed to work in just that manner. The secret to them was that they were rooted in the people's firm attachment to the principles of the *Declaration of Independence*, the threefold relationship of the equality of all men, the natural rights to life, liberty, and the pursuit of happiness, and the only legitimate means of establishing and sustaining government, consent. The principle of consent is the practical realization of the equality of men and their inalienable rights. It confirmed the necessity of a form of government which would rely upon the judgments of the governed to attain effectiveness.

It would be a mistake to think that, because just government must repose in the voluntary acquiescence of the governed, such a government is unable to legislate broadly in defense of the liberties of its people. The government of the United States was designed to be just, not naive or utopian. The means it ordinarily relies upon to secure the objectives of its laws is the voluntary compliance of citizens. The means by which this is encouraged has ordinarily been a preference for laws which, whenever possible, hand over the tasks of enforcement to the citizens and their courts, through procedures of litigation. This is especially true in the area of civil rights, which generally pits citizen against citizen (even when one is clothed with the power of the state).

The question in this Grove City bill is whether we in this country are not yet ready to trust the citizens again to provide for themselves. We all know there have been times when the ordinary recourse to legal process has been unavailing (though perhaps never to so extreme a degree as some partisans imagine). For that reason Congress in the past has often undertaken to bring alternative means to the defense of civil rights. How many of us, however, continue to believe that that describes our situation now? And grant that it were. How many of us then would think it preferable to create instruments of regulatory coercion, such as the Department of Education, instead of empowering the Justice Department to enter the causes of individuals in order to vindicate their civil rights?

In the first case, Congress and its regulatory agencies create whole classes of lawbreakers, by mere definition and without due process of law. In the second case, not only do individuals take courage from the knowledge that their government interests itself in the immediate protection of their own liberties, but we all derive the advantage of reinforcing the sense of individual responsibility for obedience to the law. Under that regime, every act of voluntary compliance becomes a victory for the principles of our government, renewed testimony to the sufficiency of government by consent. Under the reign of regulatory coercion, by contrast, we never even have occasion to learn how far willing acceptance of the rule of equal opportunity may have gone. Instead of maintaining the immediate relationship between remedies and injuries, or between victims and their abusers, we create thereby generalized classes of victims and abusers, all of whom are in fact victimized by the arbitrariness of governmental power thus exercised.

Let me bring these principles to the specific case of the bill before you. How might it affect institutions such as those where I am employed, for example? Some of you will have heard of the Claremont Colleges, located in the city of Claremont, some thirty-five miles to the east of Los Angeles. Did you know that there were six colleges, with contiguous campuses, some common programs, and independent, autonomous administrations? Indeed, the Claremont Colleges represent a genuinely federal relationship, much like that of the United States under the Articles of Confederation. The legislation proposed *seems* to regard each of the colleges, such as Harvey Mudd College, as a separate entity. That would mean that Pomona College could become subject to Title IX coverage while Harvey Mudd College would not (provided it refused all federal monies). On the other hand, the colleges do administer certain central services through a central administrative body. Will that change the picture? If all programs at Pomona College are subject to regulation, up to and including Pomona's participation in central services, do not all central services, and with them the autonomous programs of the five other colleges, follow in train?

The purpose of these questions, the like of which you have so often heard before, is only to prepare a conclusion of principle. I do not recommend the amendment of this bill. I recommend its defeat, and that Congress subsequently take up the serious work of setting our civil rights house in order. It now stands divided by conflicting purposes and an overly casual attitude towards our liberties. The result has been to raise the image of nightmares, such as I have just drawn, to expand governmental powers so vastly and so unnecessarily that only one conclusion can follow: regulators will define innumerable classes of "law breakers," most of whom they will of necessity neglect. I do not concede that violations will occur everywhere this legislation aims to finds them, but I say that, if they did, most such would go unremedied. You may say that this is also frequently the fate of general legislation which pinpoints particular crimes and leaves enforcement up to judicial processes. Individuals will neglect to pursue their rights. Perhaps that is so. But there is this important difference: governmental neglect and arbitrariness breeds general disrespect for law; whereas a citizen's failure to pursue a just cause reflects rather on himself than the law.

Respect for law is the true casualty not only of the bill proposed but of our general approach to civil rights. How else can you interpret the situation in which Grove City College has been placed? By refusing to accept students bearing ADS Pell grants, Grove City announces to its own community and the country at large, every day that passes, that it considers the law governing our national life as fatally flawed and inconsistent with the happiness of members of the Grove City community. Such law not only merits disrespect but, pushed to the extreme, justifies resistance.

There is a better path to follow, than to punish innocent recipients of aid merely because some college's football coach refuses to accept Sara Brumble, who runs the 40 in 5 seconds, as a member of his team. If, as Sara might think and her trophies from the Pepper Mill Shakers might indicate, she has weight enough to hold down her end of the line, there can be no reason to punish anyone but the coach himself. And it is not true, as the perverse logic of Justice Powell's *Hogan* dissent suggests, that the rights ("mere convenience") of one man are simply not sexy enough for great statesmen to worry about. Even if Powell's logic were correct, his opinion was only a dissent; the majority opinion inescapably points in the opposite direction. The law must aim at either one of two objectives: to invalidate explicit policies and laws of discrimination or to rectify the actions of individuals which contravene the law. The error of our present approach, placing regulation above litigation, seems to stem not simply from the mistake in Title IX but from the mistake in its model, Title VI.

Returning to the Claremont Colleges, I am mindful that the *Hogan* case against Mississippi University for Women produced a ruling which invalidated a single-sex nursing program under the Fourteenth Amendment and also ruled that Title IX's purported exemption of single-sex institutions from its control exceeded the power of Congress to grant (here relying on *Marbury v. Madison*, than which nothing could be more emphatic). Thus, present constitutional law calls into question the continued lawfulness of institutions such as our own Scripps College, whose students receive federal financial assistance in addition to other forms of direct federal aid to the institution. Unless Congress wishes explicitly to confine laws against sex discrimination to cases in which women are victims, thereby legitimating discrimination against males, and assuming the Court, following the ideas of Powell, would now buy that, the proposed regulations would seem to require either that Scripps College become co-educational or, following Grove City College, renounce federal assistance and therewith federal law.

A final example: What would happen to the nation's institutions of higher or secondary education which, on religious or moral principle, refused to provide counseling services in support of abortion for female students who chanced to become pregnant? As our law reads today, these students are free to demand abortion as a so-called right. If an educational institution, otherwise holding itself out as offering medical and psychological counseling, and also accepting direct or indirect federal monies for other programs (student aid, perhaps, from these very unfortunate ladies), would it be impossible to imagine that this was a case of sex discrimination? Would the situation follow the rule of *Geduldio v. Aiello*, that to deny disability to pregnant women discriminates not between men and women but between pregnant and non-pregnant workers? Or would there seem to be no rational basis for the distinction in this case? In the latter eventuality, might the institution, again, be told to choose between its principles and federal aid?

My examples may seem to suggest that the difficulty of defining adequately the reasons for coercing an institution's programs or activities is the major defect in the proposed legislation. That has been the concern of many others before you. I aim, however, rather more to know what constitutes "federal financial assistance," on the one hand, and whether we are comfortable with our current notions of racial, religious, and sexual equality, on the other hand. In the first case, the question is whom do we intend to aid when we offer loans and grants for scholarships to needy students. Further, whom do we punish when we limit the accredited institutions at which they may expend these monies? Following the reasoning of *Hogan*, do we actually intend that women's colleges will no longer admit needy students? Or, do we prefer Powell's inclination to treat women as "a discrete and insular minority" and thus only to bar the admission of needy students into men's colleges? Closer still to home, am I to understand that, were I to die tomorrow, the social security benefits which my children would expend on their education should expose the institutions which admit them to a blanket of federal regulations? Is there never a point when monies received in the form of federal finanical aid becomes truly our own to spend as we wish? Is it merely on loan from the government? Are we ourselves, ultimately, merely on loan from the government in the eyes of this bill's supporters?

Already we cannot measure how many needy students have failed to apply to Grove City College because of its catalog declaration that they cannot bring their ADS Pell grants with them. That would be very well indeed, if the question of federal grants did not exist. I believe, as Grove City has shown even in the present discouraging environment, that those very funds would even now be contributing to educate needy students at Grove City and elsewhere if they were not engrossed by the federal government. But the government does have the money, and I can see nothing we gain by using it to punish not only needy students but, in this proposal, even broader classes. I know of nothing we gain, but of a great deal we lose—the very least of which stems from an arbitrary and unjust narrowing of the range of choices available to our citizens.

The President of Grove City College came before you to plead, understandably, that you leave *some* institutions of higher education free. He pleaded for diversity, but I must say to you that I think he is mistaken. "Some of us" cannot be free, unless we are all free. The passage of the Reconstruction Amendments closed forever the period in our history when the idea could be entertained that we had to suffer as a necessary evil the idea could be entertained that we had to suffer as a necessary evil the slavery of a part of the people. There is no threat to any American in this legislation which does not operate against the freedom of Grove City College, just as there is no threat to Grove City College which does not endanger the liberty of every American.

Abraham Lincoln in 1858 accused Senator Douglas of "blowing out the moral lights around us." In our time, working up purported exceptions to the universal command of our constitutional principles, we have dulled our sensitivity to the moral truth that just law is no respecter of persons. We have regressed to the point that Senator Trumbull's defense of the Civil Rights Act in 1866 might now apply inversely to us: "the trumpet of freedom that we have been blowing throughout the land has given an 'uncertain sound,' and the promised freedom is a delusion." Congress initially legislated Title IX's program-specific language out of a legitmate concern not to be overbearing and intrusive on flimsy pretexts. They seemed to recognize with Edmund Burke that "liberty is a good to be improved, not an evil to be lessened." But this legislation fears liberty. It fears the free and willing compliance of informed citizens. It has been seduced by the false allure of the overseer, in complete control and adapting to every exigency. But, I remind you, the overseer's career is a treacherous one, subject to continuous pressure, low status, and high turnover. Further, the overseer rules by his will, not by law, for he presumes those subject to him to be hostile to his rule. The proposed legislation should seek higher ground. I remember an ancient complaint: "Is it Law? Is it Liberty? Is it Government? Or is it Tyranny and Oppression? If it is LAW, where is LIBERTY? If it is not LAW, where is the voice of LIBERTY?" I believe I know the answer to that query. In every era there have been those who imagined that freedom lay dying on her couch. But the tide has never moved against freedom in this land. Instead, freedom's deathless tread paces the hours of our national existence. The question has never been when will freedom no longer sustain us, but rather, whether we will not sooner grow weary of the responsibility of freedom.

Let me conclude with a prayer. I have laid aside claims of expertise and spoken to you as your fellow citizen. In that guise I pray you to hear the wail of your countrymen: "It is time to let go!" The nation cannot remain permanently in the thrall of an activist government which seeks to restrain the will of the society to paths of abstract social policy. Its time to let go, that we may govern ourselves, freely contracting with one another, defining for ourselves the means whereby we pursue legitimate ambitions, restrained only by our mutual regard to preserve to one another a freedom no less complete than we demand for ourselves. Not by law but by self-exertion and morality can we achieve the blessings of liberty. By law we safeguard our liberty, to be sure, but the uses to which we put it, the results of our liberty, must be the work of the people themselves, acting through countless individual decisions. Congress cannot ordain a suitable result for the exercise of our liberties. By legislating in such a manner as to prescribe the most minute details of our social business interactions, Congress grips in a stranglehold that freedom we claim as a birthright. It is time to let go, while the government of this country is still free to let go.

I bid the honorable chairman and the committee Godspeed.

The CHAIRMAN. The next witness will be Mr. Paul Kienel, executive director of the Association of Christian Schools International, Whittier, CA.

Mr. KIENEL. Thank you, Mr. Chairman and members of the committee.

I am Dr. Paul Kienel, executive director of the Association of Christian Schools International. The Association of Christian Schools International, ACSI, is an organization of 2,300 evangelical Christian educational institutions throughout the United States, including 126 colleges, embracing 390,000.

I speak today on behalf of civil rights and with concern over H.R. 700.

Our association is opposed to all forms of discrimination, even requiring its school administrators to sign a non-discrimination pledge annually as a condition for membership. I express that condemnation here again today. But as a representative of religious schools who support the American Constitution, I must also condemn any legislative measure which may threat religious civil rights.

It is not my purpose today to provide a legal analysis of H.R. 700. Our attorneys have carefully advised us of its provisions and of its potential impact on our schools. My point today is to implore you to get sharp focus on one aspect of this bill which I cannot believe the sponsors intend. Let me put that focus in the form of a question. Do the sponsors intend H.R. 700 to be applied to educational institutions which are totally religious and have no reason to exist except for their regionious mission, and absolutely reject on scriptural grounds governmental assistance—local State or Federal—direct or indirect?

So far as title IX is concerned, ACSI is happy that H.R. 700 does not disturb the language contained in section 901(c) of title IX, and I quote: "(3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subjection would not be consistent with the religious tenets of such organization;" However, no such exemptive language appears in title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975.

We have concern over this. First, although the Supreme Court in the *Grove City College* case defined Federal financial assistance to be those forms of assistance described in the then existing departmental regulations, the Supreme Court in 1983 also stated in the case known as *Regan* v. *Taxation with Representation* that tax exemption is a form of subsidy. We are apprehensive that, because our schools are tax exempt, they may be said to be objects of Federal financial assistance. Second, we are concerned that an unduly broad interpretation might be given to the reliance of the Supreme Court in the *Grove City College* case on departmental regulations for the definition of Federal financial assistance. While both interpretations would be wrong, now—not later in the courts—is the time to say so.

To avoid both ambiguity and litigation over this problem, we urge that you adopt clarifying language for inclusion in H.R. 700, which would place at the end of each of its four groups of amendments the following clause:

> This section shall not apply to an educational institution which is an integral part of the religious mission of a church, or which, although not a part of such mission, is pervasively religious in character, and for whom application of this subsection would conflict with religious tenets or convictions of such institution.

We shall be happy to furnish you a detailed memorandum as to why, on both constitutional and policy grounds, this amendment is desirable. In this very brief testimony, I can only summarize our essential reasons for seeking this protection. Religious ministries must not be denied their historic rights to choose students and faculty according to religious criteria or be denied their constitutional liberties of self-governance. Further, I must stress that our schools exist solely on the basis of private contributions, including the financial sacrifices of their dedicated personnel. They do not have 1 cent to spare for the additional governmentally imposed administrative burdens with which H.R. 700 would saddle them.

ACSI applauds all reasonable efforts made, within constitutional limits, to attack unfair treatment of women, or of racial minorities, the handicapped or the aged. We encourage the Congress in such efforts. But it would be reckless and wrong if, in the effort to protect those areas of civil rights, the religious civil liberties of schools such as ours—which I truly believe are a wonderful asset to our society—were not just as zealously protected.

Thank you, Mr. Chairman and members.

The CHAIRMAN. Thank you, Dr. Kienel.

[The prepared statement of Dr. Paul A. Kienel follows:]

PREPARED STATEMENT OF DR. PAUL A. KIENEL, ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL

Dr. Kienel testified on behalf of the nation's largest Protestant Christian school movement, urging that H.R. 700 be amended in order to make it crystal clear that it would not be applicable to pervasively religious ministries (such as Christian schools) which are neither directly nor indirectly recipients of "Federal financial assistance". For that purpose, Dr. Kienel presented the following language which he urged become part of H.R. 700: "This section shall not apply to an educational institution which is an integral part of the religious mission of a church, or which, although not part of such mission, is pervasively religious in character, and for whom application of this subsection would conflict with religious tenets or convictions of such institution."

I am Dr. Paul Kienel, Executive Director, Association of Christian Schools International.

The Association of Christian Schools International (ACSI) is an organization of 2,300 evangelical Christian educational institutions throughout the United States (including 126 colleges) embracing 390,000 students.

I speak today on behalf of civil rights and with concern over H.R. 700.

Our Association is opposed to all forms of discrimination, even requiring its school administrators to sign a nondiscrimination pledge annually as a condition for membership. I express that condemnation here again today.

But as a representative of religious schools who support the American Constitution, I must also condemn any legislative measure which may threaten *religious* civil rights.

It is not my purpose today to provide a legal analysis of H.R. 700. Our attorneys have carefully advised us of its provisions and of its potential impact upon our schools. My point today is to implore you to get sharp focus on one aspect of this bill which I cannot believe that the sponsors intend. Let me put that focus in the form of a question:

Do the sponsors intend H.R. 700 to be applied to educational institutions which—

Are totally religious and have no reason to exist except for their religious mission?

Absolutely *reject*—on Scriptural grounds—governmental assistance (local, state or federal), direct or indirect?

So far as Title IX is concerned, ACSI is happy that H.R. 700 does not disturb the language contained in Section 901(c) of Title IX: "(3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;"

However, no such exemptive language appears in Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975.

We have concern over this. First, although the Supreme Court, in the *Grove City College* case, defined "Federal financial assistance" to be those forms of assistance described in the then existing Departmental regulations, the Supreme Court in 1983 also stated, in the case known as *Regan v. Taxation With Representation,* that tax exemption is "a form of subsidy". We are apprehensive that, because our schools are tax-exempt, they may be said to be objects of "Federal financial assistance". Secondly, we are concerned that an unduly broad interpretation might be given to the reliance of the Supreme Court, in the *Grove City College* case, on Departmental regulations for the definition of "Federal financial assistance". While both interpretations would be wrong, now—not later in the courts—is the time to say so.

To avoid both ambiguity and litigation over this problem, we urge that you adopt clarifying language for inclusion in H.R. 700 which would place, at the end of each of its four groups of amendments, the following clause: "This section shall not apply to an educational institution which is an integral part of the religious mission of a church, or which, although not part of such mission, is pervasively religious in character, and for whom application of this subsection would conflict with religious tenets or convictions of such institution." [1]

We shall be happy to furnish you a detailed memorandum as to why, on both constitutional and policy grounds, this amendment is desirable. In this very brief testimony, I can only summarize our essential reasons for seeking this protection. Religious ministries must not be denied their historic rights to choose students and faculty according to religious criteria or be denied their constitutional liberties of self governance. Further I must stress that our schools exist *solely* on the basis of private contributions (including the financial sacrifices of their dedicated personnel). They do not have one cent to spare for the additional governmentally imposed administrative burdens with which H.R. 700 would saddle them.

ACSI applauds all reasonable efforts made, within constitutional limits, to attack unfair treatment of women, or of racial minorities, the handicapped or the aged. We encourage the Congress in such efforts. But it would be reckless and wrong if, in the effort to protect those areas of civil rights, the religious civil liberties of schools such as ours—which, I truly believe, are a wonderful asset to our society—were not just as zealously protected.

The CHAIRMAN. The final witness in this panel is Mr. Bill Lann Lee, Center for Law in the Public Interest, Los Angeles, CA.

Mr. LEE. Thank you, Chairman Hawkins, for the opportunity to testify.

My name is Bill Lee, and I am a staff lawyer of a public interest law firm that prosecutes many civil rights and other public interest cases. Prior to coming to the Center for Law, for 8½ years I was counsel for the NAACP Legal Defense and Educational Fund in

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[1] Since some ACSI schools are not "controlled by a religious institution" such as a church, but are self-governing religious institutions, the above language should therefore be used even as to the Title IX amendments to remove any doubt that such institutions are to be exempt.

New York. Among my duties was supervising the school desegregation docket of that office.

I would just like to briefly summarize my testimony since it is pretty clear that we are all running behind.

The perspective I bring is that of a practicing civil rights lawyer. I cannot overemphasize the importance that title VI and the other civil rights statutes have had in terms of promoting the informal resolution of civil rights disputes. In our cases, both as a lawyer for blacks at the NAACP Legal Defense Fund and as counsel for blacks, Hispanics and women in our cases at the center, we have found that the potential for loss of Federal funding has aided immeasurably in causing entities that are sued or have the potential to be sued to examine their practices and, in many cases, to resolve those informally. And if that institution-wide review of an entity's practices is removed, the added enforcement provided by title VI is just going to limit civil rights enforcement.

I would like to devote the remainder of my testimony just to responding to some of the questions that Representative Sensenbrenner brought out.

I think it would be appropriate to keep in mind that title VI, title IX and the other statutes that we are talking about are not the only protections blacks, women, handicapped people and others have. Other provisions, both in our Constitution and in congressional statutes, prohibit the discrimination that we are talking about. What these statutes provide is merely a supplemental remedy, and that supplemental remedy came about as a direct result of the experience of school desegregation, in which the Supreme Court in 1954 declared school desegregation illegal. But in 1964, 10 years later, everyone could see that that constitutional pronouncement was not being enforced. And the simple proposition of title VI is that Government should not participate in discrimination, the Government should not go on funding school systems that have been found discriminatory.

We have to keep in mind that when we are talking about the coverage of an institution, we are not talking about whether an institution is exempt from liability. We are talking merely about whether this institution should have applicable to it this additional remedy. I think it is clear, given the track record of the administrative enforcement of civil rights, which only took off after 1964 and after title VI and the other civil rights statutes were passed, that this additional remedy, as a practical matter, has fueled effective civil rights compliance.

Now the coverage question, as far as an administrative matter, really comes down to whether you are going to foreclose an administrative agency from looking at the institution's whole practices or whether you are going to just focus in on a narrower program. Now that doesn't mean that when the administrative agency fully investigates that there is going to be a discrimination finding that runs to a whole institution when there are no facts to support it, but I think the administrative agency should have the prerogative and not be foreclosed arbitrarily from looking at an institution-wide series of practices.

Representative Sensenbrenner, you raised a question about whether there should be a distinction between private corporations and governmental entities. I think that, as a matter of, I guess, experience I bring to it as a lawyer who has sued both corporations and private entities, my feeling is that the reason to treat school districts separately, and the reason to treat departments of, let's say, the City of Los Angeles police department as opposed to the fire department separately is that they usually function as separate entities. The Supreme Court in *Brown* v. *Board of Education* in 1954 made the classic observation that public education in our country is almost entirely prerogative of the locality. Therefore, it makes sense, in terms of investigating a discrimination complaint, to focus on localities. When you are talking about school desegration or public education, it makes sense in the title VII case, when you are talking about a complaint of discrimination by a police officer or a policewoman, to look at the police department rather than the whole city's practices.

Now as to a corporation, I think there have been many cases, particularly in the employment discrimination area, where there are allegations of system-wide practices. I think the EOC and places like that have looked not at just what is happening in one little department or one little plant, but have looked to see if there was a common practice. Now let's say an example of that would be a height requirement. I mean, there is no sense looking at the height requirement situation just in one little outfit when it is a company-wide policy or something like that.

That doesn't mean, as I say, that if there were a practice that is limited to one part of a business entity, an administrative agency is going to find liability as to the complete corporation.

The corporations, in fact, are used to filing reports on EO matters, let's say, in the employment area on a corporation-wide basis. The EOC requires EO statements that are provided on a corporation-wide basis, so this is not a sharp departure for a corporation. And under the Executive order, there are reporting requirements that are corporationwide in character.

I guess I would like to close with this comment, Representative Sensenbrenner. I think it is useful for us to bring out possible ways language can be broadly construed, and perhaps mistakenly broadly construed, and to have the drafters explain what the scope of the legislation is. I think often terms that are broad when you read a statute, when read against the legislative history, which this is obviously part of, you get your answer right there. So, often there is not a need necessarily to freight the legislation with numerous amendments of a technical kind when we have unequivocal statements from the drafters as to the scope of the legislation.

Thank you, Your Honor.

[The prepared statement of Bill Lee follows:]

PREPARED STATEMENT OF BILL LANN LEE, ESQ., CENTER FOR LAW IN THE PUBLIC INTEREST

My name is Bill Lann Lee. I am a staff lawyer at the Center for Law in the Public Interest, a Los Angeles law office that prosecutes public interest cases in civil rights, environmental, consumer rights and other areas of the law. My speciality is civil rights litigation. Prior to coming to the Center, I was an attorney at the NAACP Legal Defense and Educational Fund, where I conducted employment discrimination and school desegregation litigation on behalf of blacks seeking vindication of their civil rights.

Thank you for inviting me to testify about the Civil Rights Restoration Act of 1985. I testify in support of the Act, from the perspective of a practicing civil rights lawyer. As others have told you, the Civil Rights Restoration Act is necessary because it will get the federal government back in the business of administrative enforcement of civil rights statutes. The Act is also necessary, from my point of view, because it will restore beneficial incentives for institutions and entities that receive federal funds to review and analyze their policies and practices to see to it that civil rights laws are complied with on an institutional basis.

For over a decade, the Center for Law has prosecuted numerous cases against state and local governmental entities for civil rights violations on behalf of minority group and women plaintiffs in Los Angeles County and Southern California. Among the cases are class action employment cases against both Los Angeles City and County and the longstanding Century Freeway litigation concerning, among other things, the State's administration of housing assistance to predominantly minority displacees of the freeway construction. The object of these cases has been to change systemic violations of law. In many, if not all, these cases, federal monies directly or indirectly helped fund the programs that we alleged were discriminatory against blacks, Hispanics or women.

As a practical matter, the governmental entities in these cases knew that their exposure was not simply the injunctive relief that could be obtained by the civil rights plaintiffs. They knew that their maximum exposure, whether Title VI or Title IX was alleged or not, was the potential loss of federal funds if they were adjudicated to be discriminatory in their treatment of minority groups or women. The basis of this belief was the common understanding of the law that Title VI, Title IX and other civil rights legislation forbade federal support to institutions whose programs or activities were discriminatory. As a result, many of these governmental entities reconsidered their policies and practices and agreed to resolve claims of discrimination voluntarily, either before suit or before trial. I am sure that a far greater number of governmental entities took prophylactic action to avoid even the possibility of litigation.

That useful dynamic that led to enhanced civil right compliance was altered by the Supreme Court's decision in the *Grove City College* case to construe the statutory terms "program and activity" narrowly. From the point of view of a civil rights advocate, one of the chief harms of the *Grove City College* case is precisely this altering of the balance so that governmental institutions are now less willing to consider the error of their ways because the believe that the vast proportion of federal funding for their program or activities will continue even if they continue to discriminate.

Thus, I urge the passage of the Civil Rights Restoration Act of 1985 because it will restore to the arsenal of civil rights enforcement the effective sanction of potential federal funding cut off if a governmental institution or entity continues to violate the civil rights laws. The impact of the *Grove City College* case is not only to reduce administrative enforcement but to lessen the incentive of institutions to voluntarily comply with the civil rights laws. Unless the Act is passed, the task of civil rights enforcement will be much more difficult.

The **Chairman**. The witnesses are now available to be questioned. Ms. Johns, you discussed the gains which had been made in this area. Are you aware of any decrease in the responsiveness of educational institutions to the needs of disabled persons since *Grove City*?

Ms. **Johns**. It is difficult for me to cite—I can cite one specific case for you in which—not so much in the case of the institution, but in the case in which a student filed a complaint and in which complaints have been significantly slowed because the argument of program specificity is now another hurdle that has to be undertaken through the complaint and legal process. As you know, for students trying to gain an education, oftentimes the more bureaucracy that is put up, the more disincentive it is for them to even consider filing a complaint.

The **Chairman**. Has this been since *Grove City*?

Ms. **Johns**. Yes.

The **Chairman**. Thank you.

Dr. Kienel, may I ask you, if you please, do you oppose the extension of Federal jurisdiction to religious controlled institutions which receive Federal assistance?

Mr. KIENEL. No.

The CHAIRMAN. You do not?

Mr. KIENEL. No.

The CHAIRMAN. So if they receive Federal assistance, you would not be opposed then to legislation of the type of H.R. 700?

Mr. KIENEL. If they receive it, they deserve it.

The CHAIRMAN. I see. Thank you very much.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. Before you sit down, Dr. Kienel, I have a question of you and a couple of questions of Mr. Lee.

As I understand the religious exemption in title IX, it makes a distinction between church-controlled institutions and church-affiliated institutions. In other words, if the institution is directly controlled by the church, then the exemption applies, but if it is affiliated, even though the institution is religious in nature, it does not.

Many religious denominations in this country have very strong doctrinal objections to abortion. And one of the regulations that the Department of Education has come up with in response to title IX is a prohibition on nondiscrimination or discrimination based upon pregnancy or the termination of pregnancy. Is it your opinion that, if we don't change the religious exemption, that a church-affiliated institution, which is not a church-controlled institution, would have to provide abortions in its student health care clinic?

Mr. KIENEL. About 20 percent of our schools are independent, unaffiliated schools. They are just as religious in purpose as a church-operated school and, therefore, in the amendment we are suggesting, you can see that we are asking you to include the independent religious school. We would find it, and those independent, unaffiliated schools would find it very, very problematic to teach courses that advocate the destruction of unborn children.

Mr. SENSENBRENNER. We did receive some testimony last Friday in Chicago basically relating to Roman Catholic institutions. There is only one Catholic Church-controlled institution of higher education in the country, and that is Catholic University in Washington. All the other Catholic schools in the country are church-affiliated, meaning they are run by religious orders or otherwise. And the concern was expressed similar to what you said that the distinction between church-controlled and church-affiliated would pose a major problem in this area. So I thank you for confirming that.

Mr. Lee, in response to the concern that I expressed in my opening statement and in earlier questions, you said that there was really no problem in making the coverage of these four civil rights statutes corporationwide. I think that one of the intents of the cosponsors of this bill was simply to restore the law to the state that existed, or that we thought existed, before the *Grove City College* decision. There were three court cases—*Simpson* v. *Reynolds Metals, Bachman* v. *American Society of Clinical Pathologists,* and *Brown* v. *Sibley*—two at the U.S. court of appeals level and one at the district court level, that basically said that these statutes were program-specific rather than corporationwide.

Is it your analysis of H.R. 700 that it is corporationwide rather than program-specific?

Mr. Lee. Again, Representative Sensenbrenner, I would fall back on the observation that I think what we are talking about is a provision that permits a governmental agency to investigate, and I don't see any reason to foreclose a corporationwide investigation when it is appropriate.

Mr. Sensenbrenner. Well, you are the lawyer on this panel. You have read the bill. Does the bill envision corporationwide coverage or doesn't it?

Mr. Lee. I read that to mean that there can be investigations corporationwide.

Mr. Sensenbrenner. Then it is your opinion that this bill goes beyond what the law was prior to *Grove City,* as interpreted by the courts in the three cases that I mentioned?

Mr. Lee. Yes; that is what I was trying to get to.

Mr. Sensenbrenner. OK. Thank you.

I yield back my time.

The Chairman. He hasn't answered.

Mr. Lee. OK. What I am trying to get back to is that we have a judicial system in which—I guess we have not 12 circuits and numerous district courts. You could find cases that support many propositions. I am not sure that there was a definitive answer to that question.

What I would say is that when you read the face of the statute, what you were looking at was a statute that said it was reasonable to look at matters corporationwide, and if there were problems corporationwide, there could be a corporationwide solution. Now that doesn't mean that in every case you are going to have—let's say, if there was a problem in one shop, you are going to cover an entire corporation.

But also what we are talking about is very few corporations that receive financial assistance of the kind we are talking about. We are not talking about corporations getting contracts, which is a huge number of corporations. We are talking about a fairly small number. As I understand it, what we are talking about is job training programs and things like that.

So I wonder, Representative Sensenbrenner, to what extent we are really talking implicating the interests of all the corporations in this country. I don't know what the answer to your specific question is, but I think should be taken in perspective, because we are talking about a very small part.

Mr. Sensenbrenner. How about the Hardware Hank example that I gave earlier today?

Mr. Lee. If you could repeat that.

Mr. Sensenbrenner. Hardware Hank is a franchised operation and all of the franchisees are independent corporations. We have had testimony that indicates that if one Hardware Hank franchisee somewhere in the country gets an SBA loan to build a store, which is very clearly Federal financial assistance, then that trickles up to all of the other Hardware Hank franchisees in the Nation, even though they don't receive any kind of Federal financial assistance under this bill.

Mr. DIXON. If I could just interrupt, did you say that you had testimony before the committee? Is that what you said?

Mr. LEE. Well, the only thing I could say is I heard the counsel say that we were talking about franchise operations here, and I don't really have anything else to say other than that.

Mr. SENSENBRENNER. I have the civil rights certificate that someone who applies to put their hand in the Federal till has to sign. And one of the sentences says.

> The applicant further assures that all contractors, subcontractors, subgrantees or others with whom it arranges to provide services or benefits.

This is in the education area—

> To its students or employees in connection with its education programs or activities are nondiscriminating and not in violation of the above statutes, regulations, guidelines and standards against those students or employees.

That is pretty all-encompassing, and everybody who applies has got to sign this.

Mr. LEE. Well, what you have is you have an administrative agency enforcing regulations, and you have Congress in which this very question has been raised, and I take it you have a definitive answer from counsel. I assume that an administrative body would have to bow to the will of Congress.

The CHAIRMAN. That is not affected by this proposal, do we agree?

Mr. SENSENBRENNER. Yes, I agree.

I yield back the balance of my time.

The CHAIRMAN. Mr. Hayes.

Mr. HAYES. I just wanted to raise maybe a couple of questions with Professor Allen. I notice that, in addition to being a professor of government at Harry Mudd College, you are also a member of the California State Advisory Committee to the U.S. Commission on Civil Rights.

Mr. ALLEN. That is correct, sir.

Mr. HAYES. I take it you are well acquainted with the Chairman of that Commission?

Mr. ALLEN. I know Mr. Pendleton, yes, sir.

Mr. HAYES. I take it you understand that there is a basic disagreement?

Mr. ALLEN. I beg your pardon?

Mr. HAYES. There have been some basic disagreements from some of our key and leading civil rights forces as to some of his perceptions; do you understand that?

Mr. ALLEN. I have noted——

Mr. HAYES. The direction in which, not just him individually, but with the Commission, is going?

Mr. ALLEN. Yes, I have noted this criticism in the press.

Mr. HAYES. I am a little bit bothered, and maybe you could elaborate on it, you say at the conclusion of your statement, "It is time to let go." This is on the last page. In 1964, you notice, that kind of a quote was a responsibility for the passage of the Civil Rights Act in the first place, it was time to let go.

Further on down in that same statement, you said, "Not by law but by self-exertion and morality can we achieve the blessings of liberty." Do you think that some of the things that we have had now in the way of making our democracy function could have happened without the passage of some of the legislation such as the Voting Rights Act, the Civil Rights Act itself? And you are suggesting now, as I understand it—maybe I am wrong and maybe you could straighten me out—my interpretation of what you said is that we don't need them anymore, leave it up to the morality of people. When it didn't happen before, what makes you think it will happen now?

Mr. **Allen**. Thank you, sir. I can respond to that.

In fact, on the page prior, I quote Senator Trumbull from 1866 in the debate of the Civil Rights Act of that year. He used language much like the language you cited from 1964. I want to read just that. "The trumpet of freedom that we have been blowing throughout the land has given an uncertain sound, and the promised freedom is a delusion."

What I referred to on the last page, and about what you ask me now, is not the failure of the progress of American democracy, but the failure of certain interpretations of the remedies required in the area of civil rights. We are mature enough, it seems to me, to face up to the fact that the end is sound, while means may be questionable, is where we stand at this moment. So that if my language echos the language which brought the country to put an end to Jim Crow, to put an end to State segregation, I would say not only the language echos that, but the purpose echos it.

Mr. **Hayes**. You have concluded then we have already put an end to these?

Mr. **Allen**. No. I am concluding that it is always most important, as I seek to emphasize in my statement, that we regard the broadest understanding of American constitutional principles as the goal at which we aim and, in aiming at that goal, we must be careful never to undertake anything which removes us from it.

Now one of the things which removes us from the goal of freedom, of a colorblind society, is precisely the tendency to legislate in ways which separate and divide rather than unite. It is important, therefore, for those of us who remain true to the purpose of the great movements of American society, and I indicate the page second from the last of this report that freedom always advances in this society. One of the things that holds us together, it seems to me, is precisely the dedication to make the claims of liberty foremost, the claims of equality foremost, and never the claims of this or that piece of legislation.

Mr. **Hayes**. Mr. Chairman, I am in complete disagreement. There is no need to continue this dialog.

Thank you.

Mr. **Allen**. Thank you.

The **Chairman**. Mr. Jeffords.

Mr. **Jeffords**. Thank you, Mr. Chairman.

I just wanted to thank Catherine Johns for her very excellent testimony. I don't think anything has made any of us feel any better than to see the improvement with respect to the treatment of the handicapped. In fact, the most memorable day I had in Congress was the morning when the Department of the Post Office arrived en masse into my room when they had finally read the bill which had an amendment that I had put on to put the whole Federal Government under 504. That is a day I will always remember. I think that the improvements that we made to help the handicapped individuals have been tremendous and it has been very rewarding. Your testimony was an attestation to that fact. Thank you very much.

The **CHAIRMAN**. Mr. Dannemeyer.

Mr. **DANNEMEYER**. Thank you, Mr. Chairman.

I would have the lawyer, Mr. Lee, come up here. Are you a member of the bar?

Mr. **LEE**. Yes, sir.

Mr. **DANNEMEYER**. I don't want to put you on the spot, but have you sat down and personally drafted the complaint stating an alleged cause of action on a violation of one of these Civil Rights Acts?

Mr. **LEE**. Yes, Your Honor—I am sorry. I keep saying Your Honor.

Yes, in school desegregation cases.

Mr. **DANNEMEYER**. You have done that?

Mr. **LEE**. Yes.

Mr. **DANNEMEYER**. So you now face the challenge of stating in a complaint a cause of action, right?

Mr. **LEE**. Yes.

Mr. **DANNEMEYER**. When you have done that, in order to state the cause of action in the complaint, have you used language from the action of the Congress itself, or have you found it necessary to include a regulation in your complaint in order to pass muster and state a cause of action?

Mr. **LEE**. I have plead title VI without recourse to the regulations. I believe the regulations are useful to a court in construing title VI or any other statute, but they are no means dispositive.

Mr. **DANNEMEYER**. You believe you can state a cause of action without referring to the regulations in your complaint?

Mr. **LEE**. I think your question was have I done it. I say I have alleged a violation of an act of Congress, and I have not gone on further to say that there is a violation of a regulation.

Mr. **DANNEMEYER**. In other words, you can state a cause of action without referencing the regulation that was adopted pursuant to the act of Congress which is the Civil Rights Act or a portion of it?

Mr. **LEE**. Yes, sir.

Mr. **DANNEMEYER**. That raises my question.

Have you read this civil rights certificate, this assurance of compliance?

Mr. **LEE**. I have to admit that, until——

Mr. **DANNEMEYER**. Have you ever read this?

Mr. **LEE**. Representative Sensenbrenner sprang it on me. I have not read it.

Mr. **DANNEMEYER**. You know, it might be instructive for you as a lawyer to read this thing.

Let me ask you, how long have you been working where you have been working?

Mr. **LEE**. I have been working at the center for 2 years, and I worked at the NAACP Legal Defense Fund for 8½.

Mr. **DANNEMEYER**. I don't want to ask you the details of your contract with your employer, because that is none of my business.

But suppose that when you went to work for your present employer, your employer says to you:

> Mr. Lee, you look to me to be an enterprising sort, and I'll tell you what I'm going to do. I'm going to present you with a contract that permits me to change your employment contract anytime I see fit. And if you want to work here, you have to sign a contract that gives me the right to change the regulations under which you are going to work anytime I want to, whether you like it or not.

Are you likely to take that job?

Mr. LEE. You know, what we have is——

Mr. DANNEMEYER. Are you likely to take that job?

Mr. LEE. You know, if I wanted the money, and if it was government money, and that was a condition——

Mr. DANNEMEYER. If you were hungry enough——

Mr. LEE. I think what was said was true, if you are going to feed at the Federal trough, you have to accept the conditions.

Mr. DANNEMEYER. Even if you drown?

Mr. LEE. It is your choice to get into the trough.

Mr. DANNEMEYER. You know, when you read this assurance of compliance——

Mr. LEE. May I respond first?

Mr. DANNEMEYER. I will direct the questions.

Mr. LEE. Thank you.

Mr. DANNEMEYER. When you read the assurance of compliance, it says arguably that not only does the applicant have to sign the regulations that are known to be in existence at the time the assurance of compliance is presented, but that institution is stuck with any regulation that that department can dream up at any time in the future. Would you like to be a part of that?

Mr. LEE. I hate to say this, but it is not unusual to have this situation.

For instance, under the Constitution, we have fairly straightforward statements about due process, equal protection and the law.

Mr. DANNEMEYER. Mr. Lee, the question can be answered yes or no. Would you like to sign that kind of an assurance of compliance?

Mr. LEE. My answer is I sign such assurances every day, and I agree to such assurances every day.

Mr. DANNEMEYER. Have you read the *Grove City* decision?

Mr. LEE. You know, I am not getting a chance to answer.

The CHAIRMAN. Let the witness answer, Mr. Dannemeyer. I will make sure that your time is——

Mr. LEE. I try to answer yes or no, but I would like to explain the answer.

Mr. DANNEMEYER. You notice, Mr. Chairman, I am asking questions that can be answered yes or no.

The CHAIRMAN. Would you identify the document, because I don't think the document itself has been identified as a document that was requested of Grove City. Is it not?

Mr. DANNEMEYER. Mr. Chairman, I will make the representation that this is an exact duplicate of the document that was presented to Grove City College.

The CHAIRMAN. By the current Department of Education?

Mr. DANNEMEYER. That they were asked to sign; yes, sir.

The CHAIRMAN. That will be submitted into the record.

Mr. LEE. What I wanted to say to finish my answer is I don't think such clauses are necessarily unreasonable, not only just because when you feed at the Federal trough you can be expected to sign such provisions, but because that is not unusual in areas where there is a evolving statement of what the law is.

Under our Constitution, what governed the courts in the school desegregation cases was a fairly simple statement about equal protection of the laws. Over the years, that has evolved, it has become more specific and, in fact, some of it has changed. When you are a school district or you are an employer under title VII or any other provision, you are subject to the evolving notions of what the courts and what indeed Congress decides those terms mean.

Mr. DANNEMEYER. Mr. Lee, isn't this a reasonable proposition?

Mr. LEE. I just would like to finish the answer.

Mr. DANNEMEYER. Mr. Lee, isn't this a reasonable proposition?

Mr. LEE. And therefore, I don't think it is that unreasonable.

Mr. DANNEMEYER. Congress, you see—no one, I don't think, in this room questions the usefulness in our system for title IX. I certainly don't. I accept that. There should be no sex discrimination on the part of schools and higher education for men or women in terms of whatever is involved.

But where we get into mischief is the regulations that are adopted by the Department of Education and implementation. It was a surprise to me, for instance, to find that the whole *Grove City* case was based over the reluctance of Grove City College to sign this lousy assurance of compliance. There was never any discrimination at Grove City College. There was never any allegation of discrimination at Grove City College.

Mr. LEE. In that case, that was issue enough in addressing that. I think that is really what happened.

Mr. DANNEMEYER. The point that I seek to make is, couldn't we have this Federal law and say that it says what it says without having the Department of Education with a hunting license to go out and adopt regulations that go far beyond anything that Congress ever intended?

Let me give you an illustration of that.

Mr. LEE. I would like to answer that question, and my answer is no, because you are talking about a provision that has to be enforced by an agency. You need an agency in there, you need someone. Unless Congress itself is going to make decisions day-to-day, review documents day-to-day, you need a bunch of people who are going to do that. Now if there are instances where the administrative authorities go beyond the will of Congress, Congress is perfectly able to take care of itself.

Mr. DANNEMEYER. This specific assurance of compliance says, "The applicant further declares that all contractors, subcontractors, subgrantees or others with whom it arranges to provide service * * *" Do you realize that would cover a guy who put a contract for a sewer line on the corner of a college campus, that that contractor would have to comply with all the regulations and paperwork that the Federal Government could come up with?

Mr. LEE. If I had a general contractor, I would bind him to a provision that said that a subcontractor's mistake on a sewer line, he should be as fully liable as a subcontractor, because I want to go against both of them. I think that is perfectly reasonable.

The CHAIRMAN. Thank you, Mr. Dannemeyer.

Mr. DANNEMEYER. Thank you.

[Applause.]

The CHAIRMAN. The Chair would like to suggest to the audience that the rules prohibit a display. As much as you may agree or disagree with a witness, please respond not by any loud applause, but take it upon your own conscience to respond.

Mr. Dixon.

Mr. DIXON. Thank you very much, Mr. Chairman. I will be very brief.

Attorney Lee, I served with Bill Dannemeyer for some time and he is a close friend and a good colleague. I served in the State legislature with him and had the pleasure of serving in Congress with him. He does, though, intimidate witnesses, and I recognize you as an expert in this field. Perhaps there is something that you would like to say. I will allow you 2 minutes to address this committee in any way you want to as it relates to the comments that Mr. Dannemeyer made to you and your opportunity to respond to them.

Mr. LEE. The first thing I would like to say is I don't think I found Representative Dannemeyer intimidating. I think it is useful to put us on the spot.

I guess my general statement is that I don't think it is unreasonable to—you know, I think that if you take a lot of these things and you focus in on one little provision, you are going to find some outrage. But I think what you have to look at is the big picture of what a much maligned HEW and Department of Education has achieved in the areas in which it worked in the years in which it was effective. Particularly I point to the school desegregation situation in the South, East, and Southwest, and in the areas of discrimination in the handicapped and women in recent years.

I think that when you look at that track record, I guess you can always find instances where, I guess the term is, some pointy-headed bureaucrat goes too far. But those much maligned people have, in fact, changed and accomplished a lot of good things that I think Congress intended. I think it is good to focus on some of the abuses, but I think we should keep it in perspective that there have been very few abuses. As I say, Congress is ever vigilant about making sure that administrative agencies don't go too far.

I thank you for that opportunity.

Mr. DIXON. Thank you, Mr. Lee.

Professor Allen, I am just very much interested in your testimony, but particularly the fact that—I believe either in your testimony or afterward—you indicated that you see no need for H.R. 700 in its entirety. Is that correct?

Mr. ALLEN. That is correct, sir.

Mr. DIXON. Which causes me to ask the question: Are you supportive of the Civil Rights Act of 1964 in whole or in part?

Mr. ALLEN. I think that one of the things I attempted to accomplish in my testimony was to demonstrate the fervor with which I am attached not only to the ends of the Civil Rights Act, but to the entire history of progress in that direction in this country.

Mr. DIXON. As Mr. Dannemeyer said, I think that could be answered yes or no. Do you support the Civil Rights Act of 1964?

Mr. ALLEN. I think I just answered yes.

Mr. DIXON. Thank you very much.

The CHAIRMAN. If there are no further questions, may the Chair thank all of the witnesses. This has been a rather exciting panel and that is as it should be. Reasonable people do differ. We appreciate, however, the candor and the calmness with which the panel did differ and present their views. I think the committee has greatly benefited by them. Thank you again for your contribution.

The next panel will consist of Mr. Stanley Fleishman; Ms. Julie Hiller, Pacific Palisades; and Mr. John Calmore, Western Center, Los Angeles, CA. Will those three witnesses kindly come to the front of the room.

Mr. Fleishman, we will recognize you first. Your prepared statements in their entirety will be printed in the record, and we would appreciate the witnesses giving us the highlights from the statements so that we may have time left to question them. Mr. Fleishman, you are recognized.

STATEMENT OF STANLEY FLEISHMAN, ESQ., LOS ANGELES, CA; JULIE HILLER, PACIFIC PALISADES, CA; AND JOHN CALMORE, WESTERN CENTER, LOS ANGELES, CA, A PANEL

Mr. FLEISHMAN. I have practiced law for some 40 years, so I am prepared to answer questions.

The CHAIRMAN. You are a member of the bar, I presume.

Mr. FLEISHMAN. I have argued 10 cases before the U.S. Supreme Court. I teach constitutional law and I teach, of course, on the rights of people with disabilities. I have prepared a litigation manual to help implement section 504 which I use in the course that I teach at the Southwestern University School of Law. And I am also the director of the Law Institute at Southwestern for the disabled and elderly.

My focus is upon section 504. Before I forget it, Congressman Jeffords, I want to very much acknowledge the 1978 amendment to the section 504 which has been extremely helpful and has not yet been fully honored at all. As a matter of fact, I am in litigation still with the Postal Service, which has not complied with the congressional will to promulgate regulations to implement the act, nor, I may say, have a lot of other agencies complied.

I want to talk to employment of the disabled. The disabled are the most underemployed, the most discriminated against minority in this country by far. We hear of the unemployment rate of the blacks, which is extraordinarily high, but I tell you that the unemployment rate of the disabled is double that and more. Part of it is just not wanting to comply with the law. For example, buildings that should be accessible because there are recipients of Federal financial assistance who are involved, the buildings are not accessible and, therefore, a disabled person cannot even get into the building for the purpose of doing his or her work.

I want to focus a little bit on the *Grove City* issue, which is what we are here about, and the problems that come of it. For example, I had a case with regard to whether or not a disabled person should be entitled to serve as a juror in the County of Los Angeles, and part of the problem was that the court houses were not accessible. Originally, the county commissioner said that a disabled person is not qualified because he is not in good control of his faculties. That was the beginning. We finally won that lawsuit, and the county said, yes, you can serve as a juror, but then you couldn't get into the building because some of the court houses were on the second floor of the facility. We were able to argue successfully that, because the county had received Federal funds for court purposes, that all of the court houses had to be accessible.

Under *Grove City,* the argument now has been made that only if a particular court house, if the money is used for a particular court house, yes, that one they say has to be accessible. But if the county, for example, received money for another court house—if there is another court house which is not accessible, but there isn't specific funds for it, the argument now is being made that that is not covered. I have prepared many complaints under section 504, and heretofore we were able to argue consistent with what was generally understood, and that is that if you are a recipient of Federal financial assistance, that cuts across the entire institution.

The need for the legislation, so far as the disabled is concerned, is much greater than for any other group. One of the witnesses has testified that title VI, for example, and title IX is supplementary for minorities and women, and that is true. That is to say if there is employment discrimination, title VII will pick up there in terms of affording some rights. But the disabled are not covered by title VII. We are not in there. So if there is to be any protection against employment discrimination against the disabled, we have to look to the Rehabilitation Act itself. We have to look with regard to the Federal Government to section 501. With regard to Federal contractors, we have to look to section 503, and I want to tell you that section 503 has been gutted because the courts have held that 503 does not provide a private cause of action, and the Department of Labor does nothing. So we cannot effectively look to 503. Then we have to look to section 504 and that is it. There is no title so far as employment for the disabled is concerned.

Now with regard to section 504, I have to say that it has not received a hospitable reading by the courts. Maybe the timing was wrong. The Rehabilitation Act came in 1973 and the gloss was off the civil rights movement. We have heard, for example, that there is no longer any need for any action here. You know, we have all seen it, we have all seen God now, and we are all going to do the right thing because we are good, moral people.

But in 1973 when the act came along, we were in a money crunch and we were out of the mood of the civil rights movement. So the first case that hit the U.S. Supreme Court was *Southeastern College* v. *Davis,* which involved a deaf woman who wanted to become a nurse. She applied for admission to the nursing school and she was denied admission and was told that she couldn't perform as nurse. The case went all the way to the Supreme Court, and the Supreme Court initially in 1979 gave the definition of an otherwise qualified person an extremely narrow which really cut the heart of the statute for the moment. The Supreme Court said that an otherwise qualified person is one who was able to meet all of the program's requirements in spite of his handicap. That is to say if you are handicapped and you can run as fast as the next person, or you can see as well as the next person, then it is OK, but if there is any way that you are not able to do it—for example, I had a case where a person was applying a job he had to pick up a load that weighed 35 pounds which he couldn't carry. He couldn't lift. He wanted reasonable accommodations. He said he couldn't do 35 pounds, he could have 15, can't somebody else pick up the heavy load. The answer was no, because he couldn't do all parts of the job.

I am glad to say that the *Davis* case has not withstood the test of time. Lower courts were hostile to that decision, and finally the Supreme Court itself, this year, in the case of *Alexander* v. *Choate,* said that we did not use apt language in *Davis,* and that 504 certainly was meant to do more than we said it was in the first instance.

But the problem is that, during that period of time, from 1979 when we had this hostile reading of 504, the courts were saying generally that there wasn't anything that a recipient would have to do by way of making reasonable accommodation for a qualified handicapped person. That is the way it was going pretty much. As I say, there has been some change, and I think that, so far as the Supreme Court's *Alexander* case is concerned, it has a different tone, and I think the cases will go better.

But in the meantime, what we had up until last year, which was the *Darrone* case, was an interpretation by many of the courts which said not only did a recipient have to receive Federal financial assistance, but that Federal financial assistance had to be provided for the purpose of employment purposes before a disabled person could file a lawsuit claiming that he was discriminated against in employment under 504. That was the state of the law until the *Darrone* case came down in 1984, just 1 year ago. So what you have is that, when the statute came out, it immediately was crippled pretty much by the courts. We are now trying to rehabilitate it.

One of the big problems we now have is what is a program or activity where there can be employment discrimination. To the extent that you say that a recipient is not covered unless the program and activity is involved, you are saying that someone who receives Federal financial assistance is free to engage in employment discrimination to a certain degree. I am saying that is never permissible. I think that the Congress had a much higher goal in mind when 504 was enacted. It was proclaimed as the Magna Charta for the disabled. When Senator Jennings Randolph, who was then chairman of the Senate subcommittee, was speaking, he said:

> I want to say to the handicapped Americans who will benefit so greatly from this legislation, that a new day is dawning for many of you. The Congress has awakened to your needs. We do not * * * expand your horizons, and with your help, bring a new dimension to dignity, hope and self-sufficiency to all handicapped individuals.

Now the first thing you need to be self-reliant and having dignity is an ability to work. Able-bodied people need this. People are committing suicide when they lose their jobs because they have lost their self-respect. I am telling you that a disabled person has a greater need, because we are taught from the beginning that because we are disabled, we are nonproductive, we are nobody. I know what I am talking about because today is my 65th birthday—I accept your congratulations—[Laughter.]

And for 64 of those years, I have been disabled. I am telling you that the problems that we face and the needs that we have under 504 are extraordinarily greater than any of the other groups.

I, of course, believe and know that the right thing to do is to have this legislation cut across the whole scheme of things. But the point I do want to make is that, for the disabled, it is our only Civil Rights Act. Women and minorities have other Civil Rights Acts to fall back upon and, therefore, for us, it really is a matter of life or death.

I want to tell you how it can work, and using the regulations to make it work, if I may.

I have a client who is a blind person, and he passed the bar examination. Before he passed the bar examination, he went to work in the district attorney's office here in Los Angeles as a senior law clerk. As a senior law clerk, the policy that the DA's office has is that if you pass the bar examination, unless you do something terrible, you get a job as a district attorney. So he passed the bar examination and he was not given a job. He wasn't given a job. Why? Because of the stereotypes, the false assumptions that they made. How, he was asked, are you going to be able to see how a witness reacts? You all know that lawyers look to demeanor evidence. How does a person act on the stand? He was told, you won't be able to see the reaction of the witness and you are not going to be a competent prosecutor and, therefore, that is the reason we don't want you. Or how are you going to read the evidence, or this or that? There are 1 million ors. How can I as a disabled person, for example, claim that I am entitled to a job when I can't run to court as fast as the next guy?

But because we had 504, because the district attorney's office is a recipient of Federal financial assistance, because I was able to persuade them that the programs and activities are covered—I am not sure if under the *Grove City* case they are or not covered—but the district attorney was prepared to accept the notion that the office was a recipient of Federal financial assistance within the meaning of the act, and its programs and activities were covered and, therefore, it could not discriminate. So they hired him, and he is going to start work on Monday.

Now I can't overemphasize the importance of something like that to the extent that it goes on on a regular basis, because it means that you have to overcome prejudices, and it means a lot of other people are going to learn about the abilities of disabled people. In short, what I am saying is that we need 504 and we need it on the most expanded way and in the most expanded sense possible. If there is going to be this program specificity that *Grove City* anticipates, we are going to have litigation at every point of the way.

For example, the district attorney's office could very well say in the case I just mention, well it is true that we did get some Federal financial assistance for some of our equipment, for example, but that has nothing to do with the way we run our office in terms of prosecution and the like.

The problem was set forth in the *Darrone* case itself, which is a case that involves employment with regard to the handicapped, and overruling the cases which said the Federal financial assistance had to be focused on employment purposes only. After deciding that one in a favorable fashion, the court then turned to the question of Grove City College and said this: "This court on two occasions has considered the meaning of the terms 'program or activity' as used in Title IX." Then they cite Grove City and North Haven. "Neither opinion provides particular guidance as to the appropriate treatment of the programs before us." That was in the *Darrone case.*

> Grove City College considered financial aid to students. The court specifically declined to analogize these grants to nonearmarked direct grants and, indeed, characterized them as "sui generis." . . . North Haven Board of Education did not undertake to define the term "program" at all, finding that, at the procedural posture of that case, that task should be left to the procedural court in the first instance.

So what I am saying is that, in *Darrone*, the Supreme Court has said that it is a wide open question really as to when a recipient of Federal financial assistance would be free to discriminate in employment against qualified handicapped people on the argument that the financial assistance received was not within the program activity where they were engaging in their discrimination.

So the ending of my presentation is, if I can come to an end, that the law that is being proposed, the Civil Rights Restoration Act, is one that is wise, it is good, it is right, and it is absolutely necessary for the disabled, particularly in all of their areas, but especially in employment purposes.

Thank you.

The CHAIRMAN. Thank you, Mr. Fleishman.

[The prepared statement of Stanley Fleishman follows:]

PREPARED STATEMENT OF STANLEY FLEISHMAN, SOUTHWESTERN UNIVERSITY SCHOOL OF LAW

My name is Stanley Fleishman. I have practiced law for approximately 40 years, and have argued nine cases in the United States Supreme Court. I am an adjunct professor of law at Southwestern University School of Law where I teach Constitutional Litigation and the Rights of Disabled People. Together with my colleague Sam Rosenwein, I have prepared a litigation manual entitled, "Manual for Litigation: Rights of Disabled People - Social Change Through Litigation and Related Attorney Fee Questions." I am also Director of Southwestern's Law Institute For The Disabled And Elderly. In that capacity, and as a private practitioner, I have engaged in extensive litigation to help realize the congressional promise embodied in §504 of the Rehabilitation Act. As you can see, I myself am disabled, and have been for more than sixty years.

My focus is §504 of the Rehabilitation Act. While the language of §504 is virtually identical to that of Title VI and Title IX, the problems of people with disabilities are not the same as those of minorities and women. For example, disabled people are not protected by Title VII against employment discrimination. Instead, the disabled are protected by §504 (and §§501 and 503). Similarly, §504 was designed, and is utilized, to eliminate architectural and transportation barriers. In short, §504 is the civil rights act for people with disabilities, while Title VI is one of the civil rights acts for minorities and Title IX is one of the civil rights acts protecting women.

H.R. 700/S. 431 is the only bill truly responsive to the needs of disabled people. It would protect disabled people not only against education discrimination, but also against employment discrimination, and transportation discrimination. Additionally, the bill will help provide physical access to public and private buildings. For example, if the office of the mayor receives federal financial assistance and distributes it to local departments or agencies, the facilities of these departments and agencies would have to be physically accessible to people with disabilities. This physical accessibility will in turn enable disabled people to work in these buildings.

I.

THE PROMISE OF §504

The evil §504 was intended to overcome was squarely put by Senator Robert Dole:

> The primary goal of this bill is to assist handicapped individuals in achieving their full potential for participation in our society. . . . I believe this bill reaffirms the Senate's dedication to the handicapped citizens of this nation. The handicapped represent a large minority group who have suffered a great many injustices. They face what seems to many, insurmountable barriers. As a minority, the handicapped have always known exclusion - exclusion from an adequate opportunity to develop and contribute to their fullest capacity. We must make available the best possible programs to each handicapped American and assure the assistance he or she requires to fulfill his or her potential. (119 Cong. Rec. 24589-90 (1973)).

Senator Jennings Randolph, Chairman of the Senate Sub-Committee on the Rights of Handicapped Persons appropriately noted the expected significant impact of §504:

> I want to say to the handicapped Americans who will benefit so greatly from this legislation, that a new day is dawning for many of you. The Congress has awakened to your needs. We do now . . . expand your horizons, and with your help, bring a new dimension to dignity, hope and self-sufficiency to all handicapped individuals. 118 Cong.Rec. 35840 (1972).

In amending §504 in 1974, the Senate Committee on Labor and Public Welfare stated (S.Rep. No. 1139, 93d Cong. 2d Sess. 32):

> Individuals with handicaps are too often . . . barred from employment or are underemployed because of archaic attitudes and laws, deprived access to employment because of archaic attitudes and laws, deprived access to transportation, buildings and housing because of architectural barriers and lack of planning, and are discriminated against by public laws which frequently exclude individuals with handicaps or fail to establish appropriate enforcement mechanisms.

Senator Birch Bayh stated in his Forward to the Symposium Issue On Employment Rights Of The Handicapped (27 DePaul Law Rev. 943 et seq. (1978):

> Congressional enactment of the Rehabilitation Act of 1973 may be one of the most important pieces of legislation in our nation's history. Its civil rights provisions have the potential to elicit fundamental changes in many facets of American life. . . . It is particularly important to emphasize the desire of the Congress to make the Rehabilitation Act a sweeping guaranty of civil rights of the

> handicapped, particularly their employment rights. Congress clearly intended that §504 offer the same broad protection to the handicapped as provided to minorities by . . . the Civil Rights Act of 1964. . . . Congress and the federal government have extended to handicapped Americans the promise of a meaningful life. To quote from the long time champion of the nation's disadvantaged, Senator Hubert Humphrey, "We can no longer live with the hypocrisy that the promise of America should have one major exception - millions of children, youth and adults with . . . handicaps." It is the responsibility of the federal government to fulfill its promise to the nation's handicapped by vigorous enforcement of the law.

II.

THE BUREAUCRATIC AND JUDICIAL REACTION

A. *The Early Years*.

1. Enforcement of §§503 and 504 by federal departments and agencies has been painfully slow, and wholly inadequate. Legal action to compel agency action has met with mixed success. *See*, *California Paralyzed Veterans of America v. FCC*, 496 F.Supp. 125 C.D. Cal. 1980; *Greater Los Angeles Council on Deafness v. Department of Education*, 719 F.2d 1017 (9th Cir. 1983).

2. Section 503 of the Rehabilitation Act (requiring federal contractors to take affirmative action to employ and advance in employment handicapped persons) has been gutted, by court rulings holding that there is no private cause of action under §503. *See*, *e.g.*, *Rogers v. Frito-Lay Inc.*, 611 F.2d 1074 (5th Cir. 1980) cert. denied. 449 U.S. 889 (1980).

Until recently it was generally held by the courts that a recipient of federal financial assistance was free to engage in employment discrimination against handicapped persons unless the "primary objective" of the federal financial assistance was "to provide employment." See, e.g., Trageser v. Libby Rehabilitation Center Inc., 590 F.2d 87 (4th Cir. 1978) cert. denied 442 U.S. 947 (1979).

The unfriendly judicial attitude towards the Rehabilitation Act was set by the Supreme Court in Southeastern Community College v. Davis, 442 U.S. 395 (1979), where the Court gave the statute a narrow and gruding construction. In Davis - an education case - the Court stated:

> An otherwise qualified person is one who is able to meet all of the program's requirements in spite of his handicap.

Id. at 406.

Addressing the HEW regulation requiring reasonable accommodation the Court stated:

> If these regulations were to require substantial adjustments in existing programs beyond those necessary to eliminate discrimination against otherwise qualified individuals, they would do more than clarify the meaning of §504. Instead, they would constitute an unauthorized extension of the obligations imposed by that statute. . . . Although an agency's interpretation of the statute under which it operates is entitled to some deference . . . neither the language, purpose, nor history of §504 reveals an intent to impose an affirmative-action obligation on all recipients of federal funds. Accordingly, we hold that even if HEW has attempted to create such an obligation itself, it lacks the authority to do so.

Id. at 411-412.

It is difficult to overstate the damage Davis did to the development of the law under §504.

B. From Southeastern Community College v. Davis to Alexander v. Choate.

In Alexander v. Choate, 105 S.Ct. 712, 721 (1984). The Court acknowledged that its Davis opinion might not have been "apt." The Court there stated:

> In Davis, we stated that §504 does not impose an "affirmative-action obligation on all recipients of federal funds." . . . Our use of the term affirmative-action in this context has been severely criticized for failing to appreciate the difference between affirmative action and reasonable accommodation: The former is said to refer to a remedial policy for the victims of past discrimination, while the latter relates to the elimination of existing obstacles against the handicapped. . . . Regardless of the aptness of our choice of words in Davis, it is clear from the context of Davis that the term affirmative action referred to those "changes," "adjustments," or "modifications" to existing programs that would be "substantial," . . . or that would constitute "fundamental alterations in the nature of a program . . ." rather than to those changes that would be reasonable accommodations."

In footnote 19, id. at 720 the Court stated:

> Davis addressed that portion of §504 which requires that a handicapped individual be "otherwise qualified" before the non-discrimination principal of §504 becomes relevant. However, the question of who is "otherwise qualified and what actions constitute "discrimination" under the section would seem to be two sides of a single coin; the ultimate question is the extent to which a grantee is required to make reasonable modifications in its programs for the needs of the handicapped.

Alexander represents a major shift away from Davis. Justice Marshall, speaking for a unanimous Court acknowledged that Congress intended §504 of the Rehabilitation Act to have teeth, and a bite. Id. at 718-720. After reviewing the Act's legislative history the Court assumed, without deciding, that §504 reaches at least conduct, such as employment discrimination, that has an unjustifiable disparate impact on the handicapped. Id. at 720.

C. Consolidated Rail Corp. v. Darrone, 104 S.Ct. 1248 (1984)

Darrone specifically dealt with handicap employment discrimination. The Court there noted that §504 was "unquestionably . . . intended to reach employment discrimination." Id. at 1253. In footnote 12, id. at 1253 the Court stated:

> Congress recognized that vocational rehabilitation of the handicapped would be futile if those who are rehabilitated could not obtain jobs because of discrimination. Employment discrimination thus would have "a profound effect on the provision of relevant and effective [rehabilitation] services."

The Court noted that enhancing employment of the handicapped was so much the focus of §504 when it was originally enacted in 1973 that Congress, the next year, felt it necessary to amend the statute to emphasize that the Act was intended to prohibit other types of discrimination as well. Id. at 1253. Accordingly, the Court overruled the line of cases holding that recipients of federal financial assistance were free to engage in handicap employment discrimination unless the "primary objective" of the federal financial assistance was "to provide employment." The Court stated:

> [T]he language of §504 suggests that its bar on employment discrimination should not be limited to programs that receive federal aid, the primary purpose of which is to promote employment.

Id. at 1254.

In footnote 13 the Court stated:

> [L]anguage as broad as that of §504 cannot be read in isolation from its history and purposes. . . . Section 504 differs from Title VI in ways that suggest §504 cannot sensibly be interpreted to ban employment discrimination only in programs that receive federal aid, "the primary objective" of which is to promote employment. . . . [T]he primary goal of the Act is to increase employment of the handicapped. However, Congress chose to ban employment discrimination against the handicapped not by all employers, but only by the federal government and recipients of federal contracts and grants. As to the latter, Congress apparently determined that it would require contractors and grantees to bear the costs of providing employment for the handicapped as a quid pro quo for the receipt of federal funds. . . . But this decision to limit §504 to the recipients of federal aid does not require us to limit that section still further, as petitioner urges.

While Darrone represents an important step forward, it did not resolve the issue Congress is seeking to resolve by H.R. 700/S. 431. Addressing the question of "program specificity," the Court stated:

> This Court on two occasions has considered the meaning of the terms "program or activity as used in Title IX. Grove City College v. Bell, 104 S.Ct. 1211 (1984); North Haven Board of Education v. Bell, 456 U.S. at

> 1925-1928. . . . Neither opinion provides particular guidance as to the appropriate treatment of the programs before us. *Grove City College* considered grants of financial aid to students. The Court specifically declined to analogize these grants to non-earmarked direct grants and, indeed, characterized them as "*sui generis*.". . . . *North Haven Board of Education* did not undertake to define the term "program" at all, finding that, at the procedural posture of that case, that task should be left to the district court in the first instance. . . . The procedural posture of the case before us is the same as that of *North Haven Board of Education*. . . . We therefore do not consider whether federal financial assistance was received by the "program or activity" that discriminated against [the handicapped employee].

Id. at 1255-56.

It is thus evident that there is an urgent need for Congress to settle this issue, and to settle it in accordance with the initial and basic aim of §504, namely to increase the employment opportunities of disabled people. If the federal goverment grants funds to build a building, for example, the recipient must not be free to discriminate against qualified handicapped persons in employment.

There is an additional reason why this bill is urgently needed. The Department of Justice is now the lead agency responsible for implementing §504. Unhappily, the Department's attitude towards civil rights is extremely cramped. The Department has participated in more §504 cases against disabled people than it has in favor of them. And just recently, the Department of Justice issued its §504 regulation under the 1978 amendment, which brought federal departments and agencies within the provisions of §504. The department of Justice's regulation imposes a lessor duty on the federal goverment than the HEW regulations imposed upon recipients of federal financial assistance. This, in the face of the fact that the Supreme Court recognized that the HEW regulation represents the authoritative will of Congress. In Darrone the Court stated:

> [T]he HEW regulations particularly merit deference in the present case. The responsible government committees participated in their formulation, and both these committees and Congress itself endorsed the regulations in their final form.

104 S.Ct. at 1255.

III.

SOME PERSONAL EXPERIENCES

A recent case I handled illustrates the obstacles qualified handicapped people meet in seeking employment. Phil Wojdak is a blind lawyer. Before he took and passed the bar examination, he applied to the Los Angeles County District Attorney's office for the position of Senior Law Clerk, and was accepted. He commenced work in August of 1984. Senior law clerks were hired with the understanding that there would be Deputy District Attorney Grade 1 positions available for all those who passed the bar and whose performance as Senior Law Clerks was competent. Mr. Wojdak passed the bar on November 23, 1984. Within the week, on November 28, 1984 he was notified that he would not be offered a position. After Mr. Wojdak protested, and following a further evaluation Mr. Wojdak was advised on December 28, 1984 that a blind person simply cannot do the job of a Deputy District Attorney, and therefore he would not be hired. Mr. Wojdak was informed that it was office policy that all district attorneys be totally fungible, and that his blindness would prevent him from functioning as Master Calendar Deputy. When Mr. Wojdak pointed out that there were nearly 700 attorneys in the District Attorney's office, and that he was able to perform all the other jobs, he was advised that allowances were never made because of a district attorney's permanent disability.

This story has a happy ending. On February 1, 1985, I wrote a letter on behalf of Mr. Wojdak to the District Attorney, a copy of which is attached as Appendix A. In response to that letter, Mr. Wojdak was offered a position as Deputy District Attorney Grade 1. I have every confidence that he will be an outstanding lawyer.

Another case I handled, Cal. Ass'n. for the Physically Handicapped v. FCC, 721 F.2d 667 (9th Cir. 1983) did not have a happy ending. In 1977, shortly after the Secretary of HEW issued his §504 regulation, the Cal. Ass'n. for the Physically Handicapped ("CAPH") filed a petition with the FCC requesting the Commission to issue a regulation affording disabled people the same, or similar, equal employment opportunities afforded to minorities and women. In 1980 the Commission denied CAPH's petition stating, inter alia, that broadcast licensees were not recipients of federal financial assistance, and therefore had no duty to hire qualified handicapped persons. The Ninth Circuit agreed with the Commission stating:

> Contrary to CAPH's contention . . . it is . . . clear that broadcast licenses are not a form of federal financial assistance within the context of §504. . . . Thus, §504 does not require the FCC to issue the regulations which CAPH requests.

Id. at 669.

In so ruling the court rejected CAPH's claim that the recipient of a valuable radio or television license, at no cost, qualifies as federal financial assistance within the meaning of §504. The Ninth Circuit also rejected CAPH's contention that the FCC deprived handicapped people of equal protection of the law guaranteed by the Fifth Amendment when the agency refused to afford such persons employment opportunities in the broadcast industry, similar to those afforded minorities and women. The court stated:

> CAPH argues that . . . the FCC's refusal to include the handicapped in the EEO Program was . . . a violation of equal protection. This argument is without merit. Treating two groups differently does not necessarily violate the equal protection. The FCC claimed that in light of problems unique to handicapped persons, setting up an EEO program to monitor employment of the handicapped by FCC licensees require more resources and expertise than was required for similar programs designed to prevent employment discrimination against women and minorities. Because the FCC's justification of its refusal to include the handicapped in its EEO program was reasonable, the FCC did not violate its protection. . . .

721 F.2d at 670.

Transportation is another area where disabled people have different problems than minorities and women.

Historically, airlines have discriminated against disabled people, and until recently the courts held that §504 does not apply to commercial airlines. Two circuit courts recently disagreed as to whether commercial airlines are recipients of federal financial assistance within the meaning of §504. I handled the case of Jacobson v. Delta Airlines, 742 F.2d 1202 (9th Cir. 1984) which concluded that with minor exceptions commercial airlines are not recipients.

In Jacobson Delta Airlines refused to permit plaintiff, who has cerebral palsy, to board its plane unless he signed a form stating:

> I understand that upon subsequently acquired medical advice, Delta Airlines may refuse me passage or remove me at any point and refund the appropriate portion of my fare without further obligation. I understand that I may be removed at any point if it becomes necessary for the comfort and safety of other passengers.

Mr. Jacobson is married, holds a full-time job as a computer programs analyst and lectures frequently on, as he put it, "How wonderful it is to be handicapped." The Ninth Circuit put it, "He leads a full and productive life."

Upon being presented with the form, Mr. Jacobson initially refused to sign, asserting that it discriminated against handicapped persons and was prohibited by federal law. After protesting for an hour, and shortly before the flight's departure, he signed the form under protest, informing Delta that he intended to bring suit. Although the Ninth Circuit held that Delta was not a recipient of federal financial assistance covered by §504, it nevertheless held that Delta wrongfully discriminated against Mr. Jacobson in violation of the Federal Aviations Act. The court reached this conclusion by reading §504 into the Aviation Act. The Court then went on to state:

> An action challenged as discriminatory under the Rehabilitation Act must be given rigorous scrutiny. . . . We think that Delta's policy does not withstand such scrutiny. Indeed, Delta has failed even to demonstrate that its policy is reasonably related to achieving a legitimate purpose. The justifications Delta has advanced for distinguishing between handicapped and non-handicapped persons either are based on impermissible assumptions or advance impermissible ends. . . . Delta has not substantiated in any way its assertion that handicapped persons are more likely than others to have problems of the type that would require their removal from a flight. Delta asks us to take judicial notice of the fact that handicapped persons are more likely to have medical problems during a flight. We think however, that such a broad conclusion is not only entirely unwarranted but also prohibited by the Rehabilitation Act. We see no basis for concluding that it is likely that a handicapped person who, for instance, is simply non-ambulatory will have medical problems during the flight. In any event, that likelihood seems no greater than, say, the likelihood that a non-handicapped person will become boorish as a result of an excessive number of martinis. In fact, we think that Delta's assumption is precisely the type of stereotype that the Rehabilitation Act forbids. . . .
>
> In short, Delta has failed to show that its policy of requiring signatures on medical release forms from all handicapped persons, and only from handicapped persons, was reasonably related to a legitimate purpose. . . .

> We therefor find Delta's policy of requiring all handicapped persons, and only handicapped persons, to sign medical release forms discriminatory as a matter of law.

742 1206-1208.

Subsequently, Paralyzed Veterans of America v. CAB, 752 F.2d 694 (D.C. Cir. 1984) held that all commercial airlines are recipients of federal financial assistance within the meaning of the Act. As recipients, they should not only be prohibited from discriminating against disabled people in traveling, they should also be prohibited from engaging in employment discrimination against disabled people.

CONCLUSION

One of the great purposes of §504 of the Rehabilitation Act was to afford qualified handicapped persons the right to work, one of the most basic of all our cherished rights. Over the past 15 years, this nation has witnessed a growing awareness of the employment rights of many disadvantaged groups in our society. Women and minorities, under the protection of the Civil Rights Act of 1964, have begun to make substantial inroads into the labor market. Employment discrimination against qualified handicapped persons however, is still rampant, notwithstanding Congress's efforts to prevent such discrimination. The Congress has enacted laws to end employment discrimination for a majority of handicapped Americans, but the bureaucracy, and the judiciary, have not implemented these laws. Employment discrimination against qualified handicapped persons not only impairs their opportunity for self-sufficiency, but frequently has ramifications for the nation, as these family frequently turn to welfare. There are many reasons for the high unemployment rate of the handicapped, including the difficulty of transportation and physical barriers at the work site. The most crucial deterrent to employment however is the attitudes of able-bodies persons, including employers. Acting upon stereotypes, many employers fear that handicapped persons will be unable to perform assigned tasks. Unfortunately, judges make the same false assumptions.

To date, the congressional mandate to end employment discrimination against handicapped persons has not been realized. It remains for Congress to once again reaffirm the proposition that all people, including disabled people, are equal, and entitled to the full enjoyment of society's benefits. Passage of the Civil Rights Restoration Act of 1985 will go a long way to accomplishing this goal.

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February 1, 1985

Honorable Ira Reiner
District Attorney, County of
Los Angeles
210 W. Temple Street
Suite 18-709
Los Angeles, California 90012

Re: Phil Wojdak

Dear Mr. Reiner:

I have been consulted by Phillip Wojdak concerning his claim that he was subjected to handicap discrimination by the District Attorney's office, when he was denied employment solely because he is blind. I know that when you were the City Attorney you demonstrated substantial understanding of, and concern for, people with disabilities. With that in mind, I invite you to personally make inquiry into this complaint, before it gets too far on the litigation track. For your convenience I have enclosed Mr. Wojdak's letter to Richard Raymond, which is his notice of appeal.

I.

Section 504 of the Rehabilitation Act (29 U.S.C. §794 provides that "[n]o otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. . . ." Cal. Government Code §11135, *et seq.* contains a virtually identical requirement governing recipients of state financial assistance. These statutes apply to your office.

The Rehabilitation Act establishes a national policy of promoting employment opportunities for qualified handicapped persons, and for prohibiting discrimination

APPENDIX A

against them. Congress concluded that employment discrimination against qualified handicapped persons is just as evil, and just as hurtful to the nation, as employment discrimination against women and racial minorities. The Act was passed to enable handicapped people "to live full and independent lives." Gottfried I, supra, 103 S.Ct. at 892. In 1984 the Court added that the Act:

> "establishes a comprehensive federal program aimed at improving the lot of the handicapped. Among its purposes are to "promote and expand employment opportunities in the public and private sectors for handicapped individuals and place such individuals in employment.". . . To further these purposes, Congress enacted §504 of the Act."

Consolidated Rail Corp. v. Darrone, ____ U.S. ____, ____, 104 S.Ct. 1248, 1250 (1984).

The Court stated that it is unquestionable that §504 was intended to reach employment discrimination, saying:

> "Indeed, enhancing employment of the handicapped was so much the focus of the 1973 legislation that Congress the next year felt it necessary to amend the statute to clarify whether §504 was intended to prohibit other types of discrimination as well.

Id. at 1253. In footnote 12, the Court stated that Congress recognized that vocational rehabilitation of the handicapped would be futile if those who were rehabilitated could not obtain jobs because of discrimination. The Court noted that §§501 and 503 of the Rehabilitation Act also were aimed at discrimination in employment, and stated:

> "Employment discrimination . . . would have "a profound effect on the provision of relevant and effective [rehabilitation] services."

In footnote 13, the Court said the language of §504 is broad, and cannot be read in isolation from its history and purposes.

The legislative history of the Rehabilitation Act, as it applies to employment of handicapped people is set forth in *Le Strange v. Consolidated Rail Corp.*, 687 F.2d 767, 772-776 (3rd Cir. 1982); *Rogers v. Frito-Lay, Inc.*, 611 F.2d 1074, 1085-1108 (5th Cir. 1980) (Goldberg, J., dissenting.) and *Prewitt v. United States Postal Service*, 662 F.2d 292, 301-304 (5th Cir. 1981). From this history Judge Goldberg concluded in Rogers that Congress intended that employment discrimination "against the handicapped was to be treated as similarly as possible to that against other minority groups in those contexts in which the Act Applies." 611 F.2d at 1095. See, Senate Conference S.Rep. No. 93-1270, 93rd Cong.2d sess. 25-26 (1974).

Senator Birch Bayh, in his Foreward to the Symposium Issue on Employment Rights of the Handicapped, 27 DePaul L.Rev. 943, 944-45 (1978), stated that the Rehabilitation Act "may be one of the most important pieces of legislation in our nation's history," and that the greatest impact for handicapped citizens lies within "§501, mandating non-discrimination by the federal government in its own hiring processes; §503, prohibiting discrimination and requiring affirmative action on the part of federal contractors. . .; and finally, §504 prohibiting discrimination against handicapped individuals in any federally funded program or activity."

It is thus plain that Congress has charted a clear and pervasive national policy prohibiting employment discrimination against handicapped individuals, and calling for equal employment opportunities for qualified handicapped individuals.[1]

On January 9, 1985, the United States Supreme Court decided Alexander v. Choate, ____ U.S. ____, 53 U.S.L.W. 4072, explaining the reach and limitations of §504. The Court explained that disabled people were subjected both to invidious discrimination, Slip Op. 7, n. 12 and discrimination which was the product, not of invidious animous, but rather of thoughtlessness and indifference, of benign neglect. Slip Op. 7. The Court assumed that §504 reached not only purposeful discrimination but also reached some claims of disparate impact discrimination. Slip Op. 9, 19. Under Alexander it is clear that §504 reaches a claim involving a failure to make reasonable accommodations to employ an otherwise qualified handicapped person. As the court observed in Alexander, "[t]he primary goal of the Act is to increase employment." Slip Op. 19, fn. 28.

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[1] This national policy is reflected in other statutes designed to achieve "the commendable goal of total integration of handicapped persons into the mainstream of society." In re Marriage of Carney, 24 C.3d 728, 740 (1970). See also, Id. notes 10 and 11. On October 3, 1982, President Reagan, instituting National Employ the Handicapped Week issued a proclamation stating (47 Fed.Reg. 40,525 (1982)):

> To lead more successful lives, disabled Americans must be part of the work force. Despite . . . advances, employment of disabled men and women lags behind that of the general working-age population. There is an urgent need for the private sector to take the lead in offering jobs that provide individual dignity and enable disabled men and women to support their families. . . . We need to affirm the dignity and worth of all people in our society, whether or not they suffer from physical and mental disabilities, and we must firmly reject attitudes that deny the worth of handicapped individuals.

Justice Marshall speaking for a unanimous Court in Alexander noted that the proponents of §504 described the treatment of the handicapped as one of the country's "shameful oversights," which cause the handicapped to live among society "shuntered aside, hidden, and ignored." The Justice noted that Senator Humphrey asserted that "we can no longer tolerate the invisibility of the handicapped in America. . . ." and Senator Cranston described the act as a response to "previous societal neglect." Senator Percy described the legislation as a national commitment to eliminate the glaring neglect" of the handicapped. Alexander, Id. at 8. Justice Marshall noted that federal agencies and commentators commenting on the problems of people with disabilities found that discrimination is primarily the result of apathetic attitudes. Id. He noted that much of the conduct that Congress sought to alter in passing the Rehabilitation Act would be difficult, if not impossible to reach unless the disparate impact test was utilized. Justice Marshall stated that in enacting the Rehabilitation Act and in subsequent amendments, Congress focused on employment, where the societal and personal costs of refusal to make reasonable accommodation to disabled people are particularly high. Slip Op. 19.

Justice Marshall stated that any interpretation of §504 must be responsive to two countervailing considerations - the need to give effect to the statutory objectives of §504 and the desire to keep the statutes within manageable bounds. The proper starting point in making this balance he stated is Southeastern Community College v. Davis, 442 U.S. 395 (1979). Justice Marshall stated (Slip Op. 12-13):

> Davis . . . struck a balance between the statutory rights of the handicapped to be integrated into society and the legitimate interests of federal grantees in preserving the integrity of their programs; while a grantee need not be required to make "fundamental" or "substantial" modifications to accommodate the handicapped, it may be required to make "reasonable ones. . . ."

II.

I now turn to the cases dealing with employment discrimination based on handicap. Recently, the Ninth Circuit set forth the elements of a §504 employment handicap case. Sisson v. Helms, ____ F.2d ____, 85 Daily Journal D.A.R. 148, 9th Cir. No. 84-3522, decided January 8, 1985. Judge Alarcon speaking for the court stated that a handicapped person seeking relief from alleged discrimination under §504 must prove the following:

> "One. That he applied for a job for which a federal employer was seeking applicants. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1972) (complainant alleged race discrimination in employment).
>
> Two. That he is qualified for the position in spite of his handicap under all but the physical criteria being challenged as discriminatory. Southeastern Community College v. Davis, 442 U.S. 397, 406 (1979); Bentivegna v. United States, 694 F.2d 619, 621 (9th Cir. 1982); Prewitt v. United States Postal Service, 662 F.2d 292, 307 (5th Cir. 1981).
>
> Three. That '[h]e has a handicap that prevents him from meeting the physical criteria for employment.' Prewitt v. United States Postal Service, 662 F.2d at 309-10.
>
> Four. That the physical standards which must be met as a condition of employment for the vacant position have a disproportionate impact on persons suffering from the plaintiff's handicap.

> Five. That despite his qualifications his application was rejected. McDonnell Douglas Corp. v. Green, 411 U.S. at 802.
>
> Six. That the position remained open and the employer continued to seek applicants from persons who did not have the plaintiff's handicap. See, McDonnell Douglas Corp. v. Green, 411 U.S. at 802. (race discrimination)."

The court then went on to state that if the plaintiff established a prima facie case of handicap discrimination, the burden of producing credible evidence shifts to the employer to show the following facts:

> "One. '[T]he physical criteria offered as justification for refusal to hire the plaintiff are "job related," i.e., that persons who suffer from the handicap plaintiff suffers and who are, therefore, unable to meet the challenged standards, cannot safely and efficiently perform the essentials of the position in question." Id. at 310.'"

The court then stated:

> "If the employer presents credible evidence that the physical requirements are job related, the burden shifts back to plaintiff to present persuasive evidence that "other selection criteria without a similar discriminating effect would also serve the employer's legitimate interest in efficient and trustworthy workmanship." Id. at 310.

> *See*, *Dothard v. Rawlinson*, 433 U.S. 321, 329 (1977) (weight and height requirements in a sex discrimination case). *See also*, *Albermarle Paper Co. v. Moody*, 422 U.S. 405, 425 (1975) (pre-employment tests in race discrimination matter); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 892 (1973) (civil rights activities in a race discrimination suit)."

Finally, the court said:

> "If in response to the plaintiff's evidence that reasonable accommodation can be made, the employer 'presents credible evidence that reasonable accommodation is not possible or practicable, the plaintiff must bear the burden of coming forward with evidence that suggests that accommodation may in fact be reasonably made." *Prewitt v. United States Postal Service*, 662 F.2d at 310.

In *Bentivegna v. United States Department of Labor*, 694 F.2d 619 (9th Cir. 1982), the court explained that an employer is not permitted to discriminate by establishing restrictive "program requirements" where it could not so discriminate in making individual employment decisions. The court stated:

> "The Rehabilitation Act, taken as a whole, mandates significant accommodation for the capabilities and conditions of the handicapped. Blanket requirements must therefore be subject to the same rigorous scrutiny as any individual decision denying employment to a handicapped person." *Id*. at 621.

The court stated that the importance of preserving job opportunities for the handicapped stands as a bar to an employer arbitrarily imposing standards that adversely affect the handicapped.

To give effect to the principles underlying §504, "the courts must be wary that business necessity is not confused with mere expediency. If a job qualification is to be permitted to exclude handicapped individuals, it must be directly connected with, and must substantially promote, 'business necessity and safe performance.'" Id. 621-622.

Ultimately, the court found insufficient the justification for the employer's handicap discrimination, saying:

> "Neither the City's allegation or increased risks of injury nor the possibility of long term health problems is supported by evidence adequate to establish the direct connection between the particular job qualifications applied and the considerations of business necessity and safe performance that the Act requires. The City's control requirement violates §504 of the Act, and [plaintiff's] termination pursuant to that standard was therefore unlawful." Id. 622.

In Pushkin v. Regents of University of Colorado, 658 F.2d 1372, 1383-1387 (10th Cir. 1981) the court emphasized that an action challenged as discriminatory under §504 is given heightened scrutiny. The court stated (Id. 1383):

> "The mere fact that the University acted in a rational manner is no defense to an act of discrimination. . . . [A] finding of rational behavior on the part of the University is only the start of our search to determine whether the mandate of §504 has been followed."

In Jacobson v. Delta Airlines, 742 F.2d 1202, 1205 (9th Cir. 1984) the court held that an action challenged as discriminatory under §504 is given "rigorous scrutiny."

III.

The District Attorney's office is a recipient of both federal and state financial assistance. Therefore, while the office need not be required to make "fundamental" or "substantial" modifications to accommodate Mr. Wojdak, it is required to make "reasonable" ones. Failure to make such reasonable accommodations is a violation of both federal and state law. A careful examination of Mr. Wojdak's file demonstrates that, with reasonable accommodation, he is qualified for the job of Deputy District Attorney. The record reveals that for the most part he performed competently during the period of time he worked as a clerk in your office. The reservation articulated concerning his ability to perform were based almost wholly on false assumptions. See, In re Marriage of Carney, 24 Cal.3d 725, 737 (1979) (Most stereotypes are false and demeaning.)

IV.

All Mr. Wojdak needs is a "reader" to enable him to perform as a Deputy District Attorney. There are a number of ways that your office can provide a reader without being subjected to an unreasonable burden. It is my understanding that law clerks are hired on a continuous basis. It may be that one of your law clerks could be assigned to work with Mr. Wojdak and "act as his reader" in addition to performing his or her other duties. One of your secretaries or investigators might also act as a reader on occasion.

I do not pretend to know how your office could best accommodate Mr. Wojdak's needs, but surely, an office as large as yours has the resources and ingenuity to accomplish the task, if the will is there.

Very truly yours,

STANLEY FLEISHMAN

SF/vsb
Enclosure

cc: Mr. Phillip Wojdak

The CHAIRMAN. Ms. Hiller.

Ms. HILLER. I have been asked to attend today by my lawyers at the Western Law Center for the Handicapped. I just have a brief statement to make.

Fourteen years ago, I was diagnosed as having a seizure disorder, but it was not until December 1983, just 1½ years ago, that I was made to feel that I had a handicap. My story, unfortunately, is not a unique one.

In June 1983, I graduated with my master's in social work degree from the University of Denver. I spent the summer hounding the personnel offices of the Los Angeles County Department of Public Social Services in my search for a job. Finally, in September, I interviewed for the position of children's service worker. This is a casework position dealing with the neglected and abused children in Los Angeles County. I received a high score on the interview, and a position was offered to me in one of the east Los Angeles offices.

At the time, the only handicap I felt that I had was that I am not bilingual and would be working predominantly with Hispanic families. Los Angeles County didn't see it that way. They offered me a job, I wanted it, and I was hired in December.

Prior to starting, I had to pass a routine physical exam at County Occupational and Health Services. I was asked a standard medical history question and, of course, answered yes to having a history of epilepsy. I really didn't think twice about my answer. I never had a reason not to be totally honest about my medical history. Well, the nurse kind of raised her eyebrows and proceeded to tell me that the county had a blanket policy which, briefly stated, says any employee with a history of epilepsy is restricted from driving during county working hours. I couldn't believe what I was hearing. It just sounded that crazy to me. The children's service worker position requires driving 50 to 60 percent of the time. Since was I was restricted from driving, I could not perform the duties of the job.

Prior to December 1983, I had never heard of section 504 of the Rehabilitation Act of 1973. Now I am one of three plaintiffs who are suing the county of Los Angeles for violation of the Federal statute. Section 504 clearly states that an employer may not refuse to hire a qualified individual based solely on their handicap.

Los Angeles County categorically excluded me from a job without any consideration given to my individual medical history as it relates to my seizure disorder. They did not know that I take medication to control my seizures and have been seizure-free for 11 years. They did not know that I have held a valid California driver's license since 1970. My license was never withheld, even with the DMV's knowledge of my disability. Los Angeles County did not know that my own doctor sees no reason why I should not be allowed to drive, as long as I continue to take my medication. They did not know that I have had absolutely no side effects from my medication which might possibly interfere with my ability to handle a motor vehicle. This list really could go on and on.

All Los Angeles County really knew about me was that I fit a label, and the label would stand. In reviewing my case, the Chief of Occupational Health Services stated that, "It does not appear appropriate that the county modify or alter the medical standard which precludes persons with a history of seizures from driving on county business." Well, the can of worms had been opened.

We have made some progress in our legal proceedings. The Office for Civil Rights in San Francisco has investigated our case and found the county could be in violation of section 504. Our records are now in Washington for further investigation. We had 3 days of testimony before a county hearing officer. He ruled on our behalf. He really didn't appreciate the county's contention that, well, anything is possible. In one way we had won, but the county commissioners would not reinstate our jobs. When and if the jobs are ever opened up again—and that is very iffy with the county—we could apply without regard given to our medical condition. The county did not have to change its policy except in our case.

In April 1984, my lawyers filed a civil suit against the county in U.S. district court for violation of section 504. I am not sure we will ever go to court, as the county is now making an attempt to settle outside. The California Epilepsy Society is aiding in the development of a fair, nondiscriminatory policy to replace the county's very archaic one. What I have seen so far is a vast improvement. I feel confident that shortly my job will be reinstated, and I can go on with the business of being a social worker, a role the county has to admit I am qualified for.

If the county had not violated the very essence and intent of section 504, I doubt we would see the changes that have taken place.

Thank you.

The CHAIRMAN. Thank you. The next witness is Mr. John Calmore, Western Center.

Mr. CALMORE. Thank you. It is a privilege to be before you to testify in support of H.R. 700.

Since 1974, I have practiced law on behalf of poor people. I practiced law in Roxbury, MA, here in Watts, I have practiced at backup centers like the National Housing Law Project in Berkeley, and presently with the Western Center on Law and Poverty here in Los Angeles. I have served as director of litigation for the Legal Aid Foundation of Los Angeles. I presently serve as a board member of the Fair Housing Congress of Southern California. In November 1984, a published an article, "Fair Housing and the Black Poor and Advocacy Guide." I specialize in housing law, and I provide the background sketch, perhaps just to let a little bit of credibility to my commitment, and the statement that I abhor invidious discrimination in all of its forms and manifestations.

In testifying in support of this bill, I would like to begin by simply quoting President Kennedy in a statement he made with regard to the title VI of the 1964 Civil Rights Act. The reason I want to quote President Kennedy is because I think his quote captures the real spirit of all of these laws, title VI and the progeny, and it is the spirit that I think clearly the Supreme Court has lost sight of, and perhaps some others. President Kennedy said,

> Simple justice requires that public funds to which taxpayers of all races contribute not be spent in a fashion which encourages, entrenches, subsidizes, or results in discrimination. Indirect discrimination through use of Federal funds is invidious, and it should not be necessary to resort to the courts to prevent each individual

violation. Congress and the Executive have the responsibilities to uphold the Constitution.

I think that a lot of that spirit was curbed by the narrow focus of the *Grove City* decision, and it is with this spirit of the law in mind that I would like to turn to a few substantive considerations with respect to title VI and housing. I will just address two things. I will briefly give some indication of the persistent and pervasive nature of housing discrimination in HUD housing programs, and then I will comment on how title VI is effective in remedying that discrimination.

It is particularly important that we understand that in housing discrimination law, the primary tool that lawyers use is title VIII of the Civil Rights Act of 1968, and not title VI. However, it is also important to understand that title VIII is largely a tool for private enforcement, a tool for going to court, it is judicial process oriented and not administrative process oriented. So, for the vast number of people who are discriminated against and who cannot avail themselves of attorneys or represent themselves in improper, title VI gives them an in to take their complaint to HUD and, through HUD's compliance review, get some resolution of those issues.

I realize a little bit of pressure being last on a panel that has lasted so long, and I will try to race through this quickly. I apologize for not having had the time to submit a prepared statement, but if it is permitted, my secretary can type it up and I will have it messengered down this afternoon.

I have been focusing on housing discrimination probably since 1977. I began my focus on housing discrimination because I felt that legal services' lawyers were not in the fight sufficiently, that we were leaving that fight to civil rights organizations and others, and that we had to take a more active role. From that time on, I have been somewhat active in representing victims of discrimination, as well as assisting other attorneys who also are representing those victims of discrimination.

I would not take the time at this time to try to relate my war stories to you. I think we all are aware that there is a lot of discrimination. However, I would like to just direct your attention to what I guess would be my exhibit A. This is, I admit is perhaps in violation of copyright law, Xeroxed copies of a series of articles that recently appeared in the Dallas Morning News, beginning on February 14, 1985, and running for the next 8 days. It was a 14-month inquiry which began in Texas, but it covered the whole Nation, including some 47 cities. There was an extensive Freedom of Information Act request that provided more data for the reporters to study. I will just highlight some of the findings of the Dallas Morning News report.

Most federally financed housing is segregated. Whites fare better than blacks and Hispanics with respect to conditions, location, services and amenities. The provision of elderly housing is favored over family, providing an opposite proportion to need and having a racially discriminatory effect on blacks and Hispanics. Eighty-three percent of this Nation's households remain unserved by federally assisted housing. Most of those presently living in substandard or overcrowded units are nonwhite. Racial steering is the norm and not the exception within the federally assisted housing programs.

Nonwhite projects are allowed to decay almost as a course of business.

Both HUD and the Department of Justice have historically refused to enforce fair housing laws. Segregation exists in Mississippi and Texas, but also in California and Rhode Island. Many public housing authorities defend segregated housing in quite dramatic, graphic and emotional terms. Even good-faith efforts in integration are failing. The last article in the series is that President Reagan proposes deep cuts in HUD funding.

Almost any lawyer who deals with housing discrimination in federally assisted programs could continue this list ad nauseam, I think. The problem is that, when I read the article, although I had had a lot of experience in dealing with housing discrimination, I was still surprised, I was still startled. I was startled by the detail, by the variations on the theme of housing discrimination. I was startled by the fact that, for every step forward, we seem to take two steps backward in the name of discrimination. And finally, I was startled because I realized that for every fair housing advocate who goes to court on behalf of the victims of housing discrimination, we could go to court until I guess the Ku Klux Klan forms fair housing councils, and we will still be at the tip of the iceberg.

For that reason, it becomes extremely important that title VI, as a supplementary tool, is interpreted broadly, not merely by the courts, but by the regulatory agencies that deal with this. I cannot document numerous abuses that HUD has taken in light of the *Grove City* decision. I see H.R. 700 more as preemptive, as preventive. That decision presents bad signals. We are already dealing with a HUD administration which is hostile to the very program it is charged with administering.

When, for instance, the general counsel at HUD, Mr. John Knapp, was confronted with some of the data in this series of articles by the reporters, he admitted that, yes, there is probably some discrimination here and there, but if you look at the public housing programs, for instance, we would expect that modernization would help equalize the conditions and disparities between black projects and white projects. That sounded pretty good, because modernization could do that.

However, the HUD proposed budget for fiscal year 1986 proposes to reduce modernization funds from $875 million down to $175 million, and then only available in emergency instances. So we have a right without a remedy, we have lipservice by the general counsel, and not really consistent action.

One other example. When I first got involved in challenging HUD actions, it was back in 1975, right after passage of the Housing and Community Developing Act that gave rise to the Community Development Block Grant Program and the Section 8 Housing Program. Our record in terms of litigation was disastrous. We sued and lost, we sued and lost. Finally, instead of bringing statutory claims, we began to look at discriminatory effect. We began to say if you are going to have a housing assistance plan that indicates that the greatest need is for family housing, and yet you are going to produce only elderly housing, perhaps that is a violation of title VI in this particular context. And we began to seek HUD compliance reviews. We began under Assistant Secretary Emery to get these block grants conditioned on the provision of housing assistance that was more appropriately in response to need.

There was absolutely no question that title VIII was a better law. There was absolutely no question that many of the cases we brought had merit and should have been decided differently. But, clearly, there also was no question that the judiciary was just not entertaining these suits. Part of it may have been when you go into a Federal court judge and you are asking him to hold up millions of dollars over a housing assistance plan, and he or she just will say no, take it to HUD. That was the message. And the tool that enabled us to take it to HUD was title VI.

HUD has always, it seemed, had conflict between providing housing and providing fair housing. The idea was to provide the housing. The fairness of it was secondary, if at all considered. So we have had to rely on strong interpretations of the law. And any type of cutback gives a signal to HUD that title VI is not as important as it used to be, it is not as extensive as it used to be, perhaps we should not take it as seriously as we used to.

I realize that with respect to regulation, the scope of title VI may be broader than it is with respect to remedy. The termination of funds is pinpointed, and this proposed legislation does not do that. The activity that is tainted is all that can be terminated in terms of financial assistance. However, the regulatory scope is broad, and it is that regulatory scope that has to be constantly put before HUD as a duty—HUD, you must look into this. You must make sure that your assurances are comprehensive. That gives the lawyers and other advocates a tool to bargain with housing authorities, to bargain with private sponsors of section 8 housing, to bargain with cities who receive UDAG's and block grants. If there is any narrowing in the interpretation of the title VI scope of regulation aside from the termination provisions, I am virtually out of business. I am virtually out of business.

Let me say in closing that when I deal with HUD, I almost always begin by saying, like the irony of the fireboat burning and sinking, here we have an agency charged with providing safe and decent and sanitary housing and, yet, it is the primary frustrator. That sounds like rhetoric, but anybody who has tried to deal with HUD to provide this kind of housing for the most needy persons would say "Right on." It may be some more rhetoric, but they know that I am telling the truth.

The irony of that fireboat burning and sinking will be played out many times more in every title VI challenge if HUD gets the signal that our regulatory scope is now narrow. And what is worse about Grove City because it dealt with title IX is that, in title VI, it will be ambiguous. Instead of going to HUD with some clear mandate, we will have to go to court and get declaratory judgments, exactly what does title VI mean now. I don't know about most law offices, but the Western Center, that is a backup center for the whole State of California, has been reduced in staff from 15 lawyers to 7, and we couldn't do that. We couldn't go to court to get mere declaratory judgments. It just wouldn't fit with the urgency of other matters.

We have a good tool here and I hope that, as you consider it, you realize that detailed regulations that exist with respect to title VI do not exist with respect to title VIII. Title VIII is a tool primarily useful for going to court and not administrative complaints. Title VI is useful in both of those regards. I merely ask that you be very careful before you oppose any move that will reinforce the strength of that tool and which would oppose the spirit of the President Kennedy quote that I opened with.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Calmore.

The Chair, without objection, will hold the record open not exceeding 2 weeks, for the filing of your statement.

Mr. CALMORE. Thank you, I appreciate that.

The CHAIRMAN. Thank you.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. I have a very brief question for Mr. Fleishman, if you would step up.

Mr. FLEISHMAN. Yes, sir.

Mr. SENSENBRENNER. Mr. Jeffords and I are the only boys on this committee here today who don't represent urban or suburban districts. Both of us represent a goodly number of dairy farmers. All of these dairy farmers are indirect beneficiaries of Federal support through the dairy price support program. Under H.R. 700, does that mean that they have to build a wheelchair ramp to get into the milking parlor?

Mr. FLEISHMAN. I don't know what a milking parlor is.

Mr. SENSENBRENNER. That is where the cows are milked.

Mr. FLEISHMAN. I think that if the person is a qualified handicapped person who can do the job that, by God, you should build a ramp. It will cost maybe $100 to build the ramp. And if you are receiving Federal financial assistance, then you ought to do what the law requires. Yes, if a person wants to work there and is otherwise qualified, and the only impediment is the absence of a ramp, a ramp should be built, must be built, and it would be just to do it.

Mr. SENSENBRENNER. Thank you.

That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Hayes.

Mr. HAYES. I have no questions, Mr. Chairman.

I would like the young lady who spoke, if I could—I didn't have a copy of her statement. I would like the inclusion of her statement, or at least hold the record open until we receive her statement, if possible.

The CHAIRMAN. Yes, could you prepare a statement, Ms. Hiller? The record will be kept open for that statement.

[The prepared statement of Julie Ann Hiller follows:]

PREPARED STATEMENT OF JULIE ANN HILLER

I was asked to attend these hearings today by my lawyers at the Western Law Center for the Handicapped.

Fourteen years ago I was diagnosed as having a seizure disorder. But, it was not until December of 1983 that I was made to feel that I had a handicap.

My story, unfortuntely, is not a unique one. In June, 1983, I graduated with my Masters in Social Work degree from The University of Denver. I spent the summer hounding the personnel offices of Los Angeles County Department of Public Social Services in my search for a job. Finally, in September I interviewed for the position of Childrens Service Worker: a casework job dealing with the neglected and abused children in Los Angeles County. I received a high score on the interview, and a position was offered to me in one of the East Los Angeles offices. At the time, the only handicap I felt I had was that I am not bi-lingual and would be working predominately with Hispanic families. I wanted the job and I was hired in December.

Prior to starting, I had to pass a routine physical exam at County Occupational Health Services. I was asked the standard medical history questions, and of course, answered "yes" to having a history of epilepsy. I didn't think twice about my answer. I had never had a reason to not be totally honest about my medical history. The nurse then told me that the County had a blanket policy which (briefly stated) says any employee with a history of epilepsy is restricted from driving during county working hours. The Childrens Service Worker position requires driving 50–60% of the time. Since I was restricted from driving, I could not perform the duties of the job.

Prior to December of 1983, I had never heard of Sec. 504 of the Rehabilitation Act of 1973. Now I am one of three plaintiffs who are suing the County of Los Angeles for violation of this federal statute. 504 clearly states that an employer may not refuse to hire a qualified individual based solely on their handicap. L.A. County categorically excluded me from a job without any consideration given to my individual medical history as it relates to my seizure disorder. They did not know that I take medication to control my seizures and have been seizure free for 11 years. They did not know that I have held a valid California Drivers License since 1970. My license was never withheld even the D.M.V.'s knowledge of my disability. L.A. county did not know that my own doctor sees no reason why I shouldn't be allowed to drive as long as I continue to take my medication. They did not know that I have had absolutely no side-effects from my medication which might possibly interfere with my ability to handle a motor vehicle. This list could go on.

All Los Angeles County really knew about me was that I fit a label and the label would stand. In reviewing my case, the Chief of Occupational Health Services stated that "it does not appear appropriate that the county modify or alter the medical standard which precludes persons with a history of seizures from driving on county business". The can of worms had been opened.

We have made some progress in our legal proceedings. The Office for Civil Rights in San Francisco has investigated our case and found the county to be in violation of Sec. 504. Our records are now in Washington for further investigation. We had three days of testimony before a county hearing officer. He ruled in our favor. He didn't appreciate the County counsels contention that "Anything is possible". In one way we had won. But, the County Commissioners would not automatically reinstate our jobs. When (and if) the jobs ever opened up again, we could reapply without regard given to our medical condition. The County did not have to change its policy except in our case.

In April of 1984, my lawyers filed a civil suit against the *County of Los Angeles* in U.S. District court for violation of 504. I'm not sure we will ever go to court as the County is now making an attempt to settle outside. The California Epilepsy Society is aiding in the development of a fair, nondiscriminatory policy to replace the County's very archaic one. What I have seen so far is a vast improvement. I feel confident that shortly my job will be reinstated and I can go on with the business of being a social worker—a role the County has to admit I am qualified for.

If the County had not violated the very essence and intent of Section 504, I doubt we would see the changes that have taken place.

The **Chairman**. Mr. Jeffords.

Mr. **Jeffords**. Mr. Fleishman, I would like to inquire—Mr. Dannemeyer and you, you may remember, I am sure, had an extensive dialog with respect to some wording that appears in the agreement that had to be signed as a prerequisite to receiving Federal aid. I wonder if you would take the other side of the issue in the sense of what would happen if you did not have a provision in there which also applied to contracting out such that it would be conceivable or possible for an entity to get around the discrimination, to merely contract it out, and as to whether or not that would provide a serious loophole if such provision was not there.

Mr. **Fleishman**. It, of course, would provide that loophole. There is nothing unreasonable about a person who receives Federal financial assistance and then who works with someone else to say to that someone else, "Look, you have to comply with the law, too. You can't discriminate." We are not talking about anything that is unjust in terms of employment. All that a recipient says to his subcontractor, or whoever he is dealing with, is, "Don't discriminate against qualified handicapped people. If they can do the job, don't kick them out." There is nothing unreasonable about it.

The reverse side of it is, Congressman Jeffords, otherwise, it would be easy for a person to receive Federal financial assistance and then have subcontractors who were just violating the law right and left. There is nothing unduly burdensome, it seems to me, in having an assurance that whatever a recipient has to do, that he passes on that responsibility to those he deals with. It is the simple principle of agency.

The **Chairman**. Would the gentleman yield?

Mr. **Jeffords**. I would be happy to yield to my chairman.

The **Chairman**. For the record, could you tell us approximately how many physically handicapped persons there are in the entire country, and approximately how many are actually employed?

Mr. **Fleishman**. The number of handicapped persons is an iffy thing, because there are a lot of unknowns. But back when section 504 was enacted initially, which, as you know, was 1973, thereafter, the Secretary of HEW when he was promulgating his regulations said that there were 35 million handicapped persons.

The unemployment rate, again, varies, but I have seen figures that 60 percent of qualified handicapped persons are unemployed. There is also a bunch of persons who theoretically couldn't work. But of those who are qualified to work with reasonable accommodation, the unemployment rate is something like 60 percent.

The **Chairman**. Thank you.

Mr. Dannemeyer.

Mr. **Dannemeyer**. I would like to talk to the last gentleman there, Mr. Calmore. I appreciated what you said about protecting the rights of minorities in the area of housing, which, as I reflected on your testimony, struck me as an argument over dividing up what exists. And that is important. I don't deny that.

Wouldn't we all be better off if we had a program whereby we would talk about creating more housing and giving minorities the right to purchase their own housing, would substantially reduce prices, and this would reinforce the family units that you expressed your concern about, which I sincerely respect? Wouldn't it be more constructive for us to get on with that kind of a program?

Mr. **Calmore**. I think that, in ideal terms, yes. But given the current direction of the administration, we are going further away from that type of commitment to providing housing for the people who most need it. If we had a Congress and an administration that indicated greater support for housing, more hope for that ideal being realized, I would certainly not have to be talking about what I had to talk about today.

Mr. **Dannemeyer**. Well, I have a message of hope I want to leave with you, that some of us in the House in this Congress hope to convince our colleagues to adopt legislation that would help provide jobs in distressed inner cities by offering tax incentives for locating in distressed areas; remove the barrier to entry in the competitive job market by allowing employers to pay an opportunity wage for youths during the summer months; allow minorities and others to purchase outright their public housing at substantially reduced prices, thus helping to reinforce the family unit and increasing the responsibility of the tenants; and allowing minorities and others the opportunity to attend better schools by offering special education vouchers.

Isn't that a constructive program that you could support?

Mr. **Calmore**. In the long run, yes. But what we do in the meantime is still a question.

There was a section 235 home ownership program that just didn't work. I don't see how you can come up with a more cheap program or a program that would target to less needy people and still help. I think that it is important to build what you may be proposing, but it doesn't answer the immediate need of people who are paying 40 and 50 and 60 percent of their income for rent, who are female heads of households, who may not be able to take advantage of a job training program when the have three small children in the home and no chance to have day care provided to go out and work. So there are a lot of people who will get lost in the shuffle even if your program were to come to fruition tomorrow. Those are the people I think that HUD traditionally has not really dealt with. That is why I am saying what I am saying.

Aside from that, no matter how good it would be to talk about one America for all, I think the reality is that this is a very divided country. It is polarizing more and more each day along the lines of race, along the race of class. And there are going to be discriminatory actions taken where the traditional victim of discrimination would still probably not fare as well under your program as you would hope they do. So the fact that housing discrimination is alive in other areas of America indicate to me that housing discrimination would also be a problem in your program.

Mr. **Dannemeyer**. I would just say, sir, help give us a chance of adopting something like this. Maybe it can improve the lot of a lot of us. That is the spirit I hope to leave you with.

Mr. **Calmore**. Approach every avenue.

The **Chairman**. Is the gentleman, Mr. Dannemeyer, reading from the program presented to the Congress by Mr. Armey? I seem to have a copy of it and I——

Mr. **Dannemeyer**. That is part of it, Mr. Chairman. But we are the minority in the House and we have difficulty in getting a hearing on most programs that we think the American public needs and deserves, and I only hope you will assist in getting a hearing on that.

The **Chairman**. I was going to ask that it be made a part of the record since it refers to the opportunity wage as being the subminimum wage for youth. I think it should be identified for what it really is, and not for the purpose of surprising a witness.

Mr. **Dannemeyer**. Mr. Chairman, I can only observe that whenever the Government sets a maximum price above the market, you will have a shortage; and when you set a minimum price, you will have a surplus.

The **Chairman**. You would have no objection to putting that into the record so that we may refer to it in the future?

Mr. **Dannemeyer**. I have no problem with that.

The **Chairman**. Thank you.

Are there any other questions?

If not, again we wish to thank the witnesses on this panel for their presentations, and we certainly do commend you on the candor with which you answered the questions.

Mr. Dixon, did you have questions?

Mr. Dixon. No; I have no questions.

The Chairman. Thank you again very much.

The committee will stand in recess for 1 hour. We will reconvene promptly at the end of the hour, which would mean approximately 1:30, at which time the afternoon session will proceed. We have some very interesting witnesses for the afternoon session.

[Whereupon, at 12:30 p.m., the committees recessed, to reconvene at 1:30 p.m. this same day.]

AFTERNOON SESSION

The Chairman. The committee is called to order.

The first afternoon panel will consist of Ms. Carole Bovitz, State division president of the American Association of University Women; Virna Canson, West Coast regional director of the NAACP, San Francisco, CA; Mr. Eugene Mornell, executive director of the Los Angeles County Commission on Human Relations; Ms. Renee Campbell, member of the national board of the Girls Clubs of America; Ms. Mary Bergan, director legislation, California Federation of Teachers; and Ms. Gloria Kapp, national steering committee member of the National Women's Political Caucus.

May I indicate to the witnesses that their testimony, as submitted in printed form, will be printed in the record at this point, and we would appreciate their giving us the highlights of it. Then, after all of the witnesses have testified, we will then question the witnesses as the Members may so desire. We appreciate your attendance. We, obviously, look forward to your testimony. This committee is very thankful for the participation of each and every one of you. I say that not to try to single individuals out with all the glorious things we could say about you and your organizations, but I think you recognize that the invitation to have you testify certainly indicates the esteem which we have for each and every one of you.

We will start out then in the order in which I announced your names. Ms. Carole Bovitz, president of the American Association of University Women.

STATEMENTS OF CAROLE BOVITZ, STATE DIVISION PRESIDENT, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN; VIRNA CANSON, WEST COAST REGIONAL DIRECTOR, NAACP, SAN FRANCISCO, CA; EUGENE S. MORNELL, EXECUTIVE DIRECTOR, LOS ANGELES COUNTY COMMISSION ON HUMAN RELATIONS, LOS ANGELES, CA; RENEE CAMPBELL, MEMBER, NATIONAL BOARD OF THE GIRL SCOUTS OF AMERICA; MARY BERGAN, DIRECTOR OF LEGISLATION, CALIFORNIA FEDERATION OF TEACHERS, SACRAMENTO, CA; AND GLORIA KAPP, NATIONAL STEERING COMMITTEE MEMBER, NATIONAL WOMEN'S POLITICAL CAUCUS, LOS ANGELES, CA

Ms. Bovitz. Good afternoon. My name is Carole Bovitz, and I am here today representing the California State division of the American Association of University Women. We have 193,000 women throughout the Nation in the AAUW.

I am here to reiterate AAUW's strong support for H.R. 700 and Senate bill 431, Civil Rights Restoration Act of 1985. The California State division urges the Congress to take seriously the importance of this bill to the 187 branches that we have throughout this large State of California, in nearly every community, and our 33,000 members that we have in AAUW in California.

In the winter of 1881, 17 women met at MIT to respond to a Boston physician's study which purported to demonstate that a college education would be hazardous to a young woman's health. Out of that meeting, and a conviction to improve the status of women in education, the American Association of University Women was formed.

It took over 90 years after that meeting for the first Federal law prohibiting sex discrimination in educational institutions to be passed by Congress. Title IX of the Education Amendments of 1972 is the dream of AAUW's founders and remains today the only Federal law protecting the rights and potential of women and girls in education.

But on February 28, 1984, the U.S. Supreme Court dealt a crippling blow to title IX and to the women and to the girls of America.

In the *Grove City* ruling, the court decided that educational institutions receiving Federal funds must comply with title IX provisions forbidding discrimination on the basis of sex only in the specific program or activity that receives the funds, leaving the rest of the institution to discriminate without violating title IX.

It is important to note that prior to the *Grove City* decision, every administration charged with enforcing the anti-discrimination statutes—Republican and Democratic alike—interpreted coverage in a broad rather than a program-specific manner.

AAUW members have experienced firsthand, and through the experience of their children, the dramatic gains in educational opportunity for girls and women since the enactment of title IX in 1972. As a former school board member in the Santa Barbara County, I was working very closely with the students, and I saw what title IX was about to do for our children.

American parents who want a better life for their children, better opportunity for both their sons and daughters, better opportunity for all American students despite sex, age, race or disability, must recommit themselves to support title IX and title VII of the Civil Rights Act, section 504 of the Rehabilitation Act, and the Age Discrimination Act. As I get older every year, I am thinking of that one myself very closely. This is why AAUW so strongly supports the Civil Rights Restoration Act.

The AAUW, therefore, urges the Congress to take swift and definitive action to prevent a loss of opportunity in the classroom and on the athletic playing field. We will watch for your support for this issue of great concern to our membership.

Thank you very much.

The CHAIRMAN. Thank you, Ms. Bovitz.

[The prepared statement of Carole Bovitz follows:]

PREPARED STATEMENT OF CAROLE BOVITZ, CALIFORNIA STATE DIVISION, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

Good Morning, my name is Carole Bovitz and I am here today representing the California State Division of the American Association of University Women.

I am here to reiterate AAUW's strong support for HR 700/S 431, the Civil Rights Restoration Act of 1985. The California State division urges the Congress to take seriously the importance of this bill to the branches and 33,000 members of the AAUW in the State of California.

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The AAUW therefore urges the Congress to take swift and definitive action to prevent a loss of opportunity in the classroom and on the athletic playing field.

We will watch for your support for this issue of great concern to our membership.

Thank you.

CAROLE BOVITZ,
President, American Association of University Women, California State Division.

The **CHAIRMAN**. The next witness on the panal is Ms. Virna Canson. Is Ms. Canson in the audience?

Mr. Eugene Mornell, executive director of the Los Angeles County Commission on Human Relations.

Mr. **MORNELL**. Mr. Chairman, members of the committee, I am Eugene Mornell, executive director of the Los Angeles County Commission on Human Relations.

Our Commission was initially created in 1944, and it is one of the oldest civil rights agencies in the United States. Our mission is to promote improved human relations, civic peace, intergroup understanding, and the full acceptance of all persons in all aspects of community life. To accomplish this, we develop programs to reduce and eventually eliminate racially and religiously motivated violence, intergroup tension and conflict, discrimination and prejudice based on race, religion, national origin, sex, sexual orientation, age and disability. We have 15 commissioners, 3 appointed by each member of our board of supervisors, who establish our policies and approve our programs. Our executive director, professional staff and volunteers carry out these programs.

During the past 3 years, our Commission has conducted a number of hearings throughout Los Angeles County. These hearings have permitted more than 200 organizations to tell our commissioners about the most critical human relations problems facing our community and to offer recommendations for the resolution of these problems. Each of these hearings has resulted in a report with our own recommendations to the board of supervisors. They have also resulted in an extensive review of our own program and the development of numerous projects by our own staff to address the problems identified.

In 1982 and 1983, we held five "State of the County" hearings, one in each supervisorial district of the county, in which representatives of more than 130 organizations described continuing and increasing problems of tension and conflict among immigrant and refugee groups, the indigenous black and Latino communities of the region, and the white population. They also described specific problems of discrimination, prejudice and inadequate services in education, employment, the treatment of minority women and single parent heads of households, health, police-community relations and housing. They also described, to a somewhat less extensive degree, problems in the media and among disabled persons and the elderly.

In 1983 and 1984, we held hearings on rising anti-Asian bigotry, on the response after 19 years to problems identified by the McCone Commission at the time of the 1965 Watts riots in south central Los Angeles, and on discrimination based on sexual orientation. These were significant issues identified in our earlier hearings, and at each of these three hearings, more than 20 organizations were represented in providing us with additional testimony. Finally, last month we held a hearing on minority youth unemployment, yet another issue that had been identified in our earlier hearings.

I am not going to describe our hearings, findings or recommendations in any detail today. I have given copies of each of the reports we have released to date to your staff. I have mentioned these hearings, however, in order to provide background for the action taken by our commissioners at their meeting this past Monday, March 18, 1985. At that time, they unanimously voted to ask the Los Angeles County Board of Supervisors to endorse H.R. 700 and work actively for its passage. And I have every anticipation that the board will also endorse H.R. 700.

This action by the Los Angeles County Commission on Human Relations was based on 3 years of testimony, as well as other experience, that has convinced that, although much civil rights progress has been achieved over the past 20 years or more, much remains to be done. Discrimination is still with us. In some ways it is as blatant as before. In some ways it has become more subtle and complex. In some ways and in some regions of the country new problems have arisen and new groups are affected. The need for the strongest possible civil rights legislation remains apparent to us, although H.R. 700 does not represent anything new, only a means for restoring protections available prior to *Grove City College* v. *Bell.*

Our commission does not believe that all of the civil rights and human relations problems facing us in Los Angeles County can be resolved by legislation. On the contrary, we believe that resolution of most of these problems is dependent on education, community development and the cooperative efforts of community groups, government, the private sector, and the individual residents of our region. But this is not to say that a fundamental commitment to civil rights and the most fundamental kind of legal protection by the President and the Congress are not essential. They are. Such protection is not available under the Grove City College decision, however, and legislation to correct this defect is therefore vital.

Thank you.

The CHAIRMAN. Thank you, Mr. Mornell.

[The prepared statement of Eugene S. Mornell follows:]

PREPARED STATEMENT OF EUGENE S. MORNELL, EXECUTIVE DIRECTOR, LOS ANGELES COUNTY COMMISSION ON HUMAN RELATIONS

The Los Angeles County Commission on Human Relations was initially created in 1944 and is one of the oldest civic rights agencies in the United States. Our mission is to promote improved human relations, civic peace, intergroup understanding, and the full acceptance of all persons in all aspects of community life. To accomplish this we develop programs to reduce and eventually eliminate racially and religiously motivated violence, intergroup tension and conflict, discrimination and prejudice based on race, religion, national origin, sex, sexual orientation, age, and disability. We have 15 Commissioners, three appointed by each member of the Board of Supervisors, who establish our policies and approve our programs. Our Executive Director, professional staff, and volunteers carry out these programs.

During the past three years, our Commission has conducted a number of hearings throughout Los Angeles County. These hearings have permitted more than 200 organizations to tell our Commissioners about the most critical human relations problems facing our community and to offer recommendations for the resolution of these problems. Each of these hearings has resulted in a report, with our own recommendations, to the Board of Supervisors. They have also resulted in an extensive review of our own program and the development of numerous projects by our own staff to address the problems identified.

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Our Commission does not believe that all of the civic rights and human relations problems facing us in Los Angeles County can be resolved by legislation. On the contrary, we believe that resolution of most of these problems is dependent on education, community development, and the cooperative efforts of community groups, government, the private sector, and the individual residents of our region. But this is not to say that a fundamental commitment to civil rights, and the most fundamental kind of legal protection, by the Congress and the President are not essential. They are. Such protection is not available under the *Grove City College* decision, however, and legislation to correct this defect is therefore vital.

The **CHAIRMAN.** The next witness is Ms. Renee Campbell, member of the National Board of the Girls Clubs of America. Ms. Campbell, we welcome you.

Ms. **CAMPBELL.** Thank you. Good afternoon.

I am, of course, a member of the National Board of Girls Clubs of America, as you just indicated. GCA is a national not-for-profit direct service and advocacy organization for girls and young women. Thank you for the opportunity to testify before you on the urgent need to pass the Civil Rights Restoration Act of 1985, H.R. 700.

Why is swift passage of this bill so important to America's 21 million girls aged 6 through 18? The reasons are numerous. First of all, there are ethical reasons. Simply put, Federal funds should not support discrimination. Yet, in the wake of the Supreme Court's decision in *Grove City College* v. *Bell,* discrimination may occur in programs of institutions and agencies receiving Federal funds as long as the program—the specific program, that is—does not specifically receive the Federal funds. This result is absurd. We were fearful that this decision would have a chilling effect on the enforcement of the Federal antidiscrimination laws and, as reported in "Injustice Under the Law: The Impact of the *Grove City College* Decision on Civil Rights in America," which was prepared by the project on equal education rights and other organizations, this has already come to pass. Investigations under all four statutes, which are the focus of H.R. 700, were dropped were the alleged discrimination occurred in programs where Federal money went to the institution in general rather than directly to the program itself.

But beyond the ethical question of simple justice, the Civil Rights Restoration Act is crucial to today's girls for economic reasons. This is GCA's 40th anniversary year, and our theme is "Equalizing Girls' Options for Economic Automomy." This theme reflects what we have learned throughout the years in working with girls: to have independence and self-esteem, a woman needs the ability to be economically autonomous. Without this, they can gain no equality in our system. A woman gains the ability, of course, through our educational systems, which is the most important part of her nurturing throughout her years. Barriers to that automony exist in both educational institutions and in the workplace, as well as in personal and cultural attitudes and images that are reflected in our society.

The barriers in education were significantly breeched as a result of the passage of title IX of the Education Amendments of 1972. Since that time, the proportion of women earning professional degrees has increased dramatically. According to the National Center for Education Statistics, 1981-82, women earned one-third of the law degrees, one-fourth of the medical degrees, over one-third of the veterinary medicine degrees, and nearly one-sixth of the degrees in dentistry. This represents four and fivefold increases over the last 10 years.

To prevent raising the old barriers of sanctioned discrimination, it is necessary to restore the interpretation of the four civil rights statutes to their pre-*Grove City* v. *Bell* status. By passing H.R. 700, Congress would reaffirm our country's intent to provide equal opportunity to all, including those who have been left out in the past. This is simply a method of redressing past injustices.

Girls as a group fall into the category of the people who have been "left out" of our society's mainstream. As females and as children, they are twice removed from the mainstream of national concerns. Yet, as women, they will be expected to raise America's children—and often alone—and to make up half the work force of the future of tomorrow. Whether through cultural messages such as "girls are and boys do," lack of encouragement to pursue math, science and computers, stereotyped vocational training, teenage motherhood, lack of leadership development for girls, exploitative media images or the inequitable allocation of resources to girls' services, girls on the whole have a difficult time preparing for economic automony as adults. The *Grove City College* decision poses another serious barrier. By removing the broad prohibition against discrimination by entities receiving Federal assistance, inequality of opportunity may go unchallenged.

As advocates for girls, we are particularly concerned about the implications of narrowing title IX. The GCA Council adopted a policy statement in April 1984 stating that:

> Without the full benefits of the education available in the United States today, girls cannot compete and achieve successfully in our increasingly complicated and technological world. Therefore, GCA is committed to the concept of equal access to education for all, and supports policies that will enable girls to have equal access to quality, nonsexist education at every level.

Without the protection of a strong title IX prohibiting sex discrimination in education, we will be turning back the calendar to the time when a girl or young woman could be denied access to higher math classes because it was filled by more interested young men. Girls may no longer aspire to athletic scholarships if the physical education departments of their selected colleges happens to receive no Federal funds directly. Elementary and secondary school-age girls may find that they do not have equal access to their school's computers, or they may find themselves receiving guidance to choose typically female and thus low paying occupations. A student may even find herself the subject of sexual harassment. And if that sexual harassment occurred in a building that did not receive direct Federal aid, then she may not have the opportunity to seek redressment for this injustice.

Equality is crucial to the future of self-sufficiency of today's girls and young women. In the face of segregation by sex in occupations and earning levels, with women continually concentrated on low paying jobs, it is clear that change will only come when girls and women have access to our educational institutions on an equal basis. As stated earlier, that access grew out of the passage and enforcement of Federal law, such as title IX. Those gains can be lost without the comprehensive application of the law that was the intent of Congress.

Minority girls, disabled girls, all girls, as well as society as a whole, must be guaranteed the protections provided by title VI of the Civil Rights Act, by section 504 of the Rehabilitation Act of 1973, and by the Age Discrimination Act of 1975. The Civil Rights Restoration Act of 1985 is the only measure currently before Congress that would restore these four laws to their broad interpretation. Thus, passage of H.R. 700 and its companion bill in the Senate is essential if as a nation are to support the full participation of girls in today's society and in the future.

Thank you very much.

The CHAIRMAN. Thank you, Ms. Campbell.

[The prepared statement of Renee Campbell follows:]

PREPARED STATEMENT OF RENEE CAMPBELL ON BEHALF OF THE GIRLS CLUBS OF AMERICA

Good morning (afternoon), Mr. Chairman. My name is Renee Campbell. I am speaking today as a member of the National Board of Girls Clubs of America (GCA). GCA is a national not-for-profit direct service and advocacy organization for girls and young women. Thank you for the opportunity to testify before you on the urgent need to pass the Civil Rights Restoration Act of 1985, HR 700.

Why is swift passage of this bill so important to America's 21 million girls aged 6–18? First, there are ethical reasons. Simply put, federal funds should not support discrimination. Yet in the wake of the Supreme Court's decision in *Grove City College* v. *Bell*, discrimination may occur in programs of institutions and agencies receiving federal money, as long as the program itself does not specifically receive federal money. We were fearful that this decision would have a chilling effect on the enforcement of federal antidiscrimination laws, and as reported in "Injustice Under the Law: The Impact of the *Grove City College* Decision on Civil Rights in America" prepared by the Project on Equal Education Rights and other organizations, that has already come to pass. Investigations under all four statutes have been dropped where the alleged discrimination occurred in programs where federal money went to the institution rather than directly to the program itself.

But beyond the ethical question of simple justice, the Civil Rights Restoration Act is crucial to today's American girls for *economic reasons*. This is GCA's 40th Anniversary year, and our theme is "Equalizing Girls' Options for Economic Autonomy." This theme reflects what we have learned through our years of working with girls: to have independence and self-esteem, a woman needs the ability to be economically autonomous. She gains that ability as a girl and as a young woman. Barriers to that autonomy exist in both education and the workplace, as well as in personal and cultural attitudes and images. The barriers in education were significantly breeched as a result of the passage of Title IX in 1972. Since that time, the proportion of women earning professional degrees has increased dramatically. According to the National Center for Education Statistics, 1981–1982, women earned one-third (33.4%) of the law degrees, one-fourth (25.0%) of medical degrees, a little over one-third (36.2%) of veterinary medicine degrees, and nearly one-sixth (15.4%) of the degrees in dentistry. This represents four and five-fold increases in 10 years.

To prevent raising the old barriers of sanctioned discrimination it is necessary to restore the interpretation of the four civil rights statutes to their pre-*Grove City College* status. By passing HR 700, Congress would reaffirm our country's intent to provide equal opportunity to all, including those who have been left out in the past.

Girls as a group fall into this category of people who have been "left out." As females and children, they are twice removed from the mainstream of national concerns. Yet as women, they will be expected to raise America's children (often, alone) *and* to make up half of the workforce of the future. Whether through cultural messages such as "girls are . . . boys do," lack of encouragement to pursue math, science and computers, stereotyped vocational training, teenage motherhood, lack of leadership development for girls, exploitative media images or the inequitable allocation of resources to girls' services, girls on the whole have a difficult time preparing for economic autonomy as adults. The *Grove City College* decision poses another serious barrier—by removing the broad prohibition against discrimination by entities receiving federal assistance, inequality of opportunity may go unchallenged.

As advocates for girls, we are particularly concerned about the implications of narrowing Title IX. The GCA Council adopted a policy statement in April 1984 stating, "Without the full benefits of the education available in the United States today, girls cannot compete and achieve successfully in our increasingly complicated and technological world. Therefore, GCA is committed to the concept of equal access to education for all and supports policies that will enable girls to have equal access to quality, non-sexist education at every level."

Without the protection of a strong Title IX prohibiting sex discrimination in education, we will be turning back the calendar to the time when a girl or young woman could be denied access to a higher math class because it was filled by interested young men. Girls may no longer aspire to athletic scholarships if the Physical Education Department of their selected college happens to receive no federal money. Elementary and secondary school-age girls may find they do not have equal access to use of their school's computers, or they may find themselves receiving guidance to choose typically "female" and thus low-paying occupations. A student may even find herself the subject of sexual harassment, but not be able to seek redress through enforcement of Title IX if the harassment occurs in a building constructed without direct federal funds.

Equity is crucial to the future self-sufficiency of today's girls and young women. In the face of segregation by sex in occupations and earnings levels, with women continually concentrated in low-paying jobs, it is clear that change will only come when girls and women have access to equitable educational opportunities. As stated earlier, that access grew with passage and enforcement of federal law. Those gains can be lost without the comprehensive application of the law that was the intent of Congress.

Minority girls, disabled girls, all girls, as well as society as a whole, must also be guaranteed the protections provided by Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act, of 1975. The Civil Rights Restoration Act of 1985 is the only measure currently before Congress that would restore these four laws to their broad interpretation. Thus passage of HR 700 and its companion bill in the Senate is essential if we as a nation are to support the full participation of girls in today's and tomorrow's society.

Thank you.

The CHAIRMAN. Ms. Mary Bergan, director of legislation, California Federation of Teachers.

Ms. BERGAN. Mr. Chairman, members of the committee, good afternoon.

I really have several hats that I get to wear with relation to this issue. I am a member of the Women's Rights Committee of the American Federation of Teachers, and also the vice president for California of the Coalition of Labor Union Women, all of whom are deeply distressed over the impact of *Grove City* decision.

I am here today to express my union's strong support for the Civil Rights Restoration Act of 1985. If the equality of opportunity which we thought had been achieved through title VI, title IX, section 504 and by the Age Discrimination Act is to be a reality, it is crucial that the Civil Rights Restoration Act be enacted in this session of Congress.

The past two decades have been ones of steady progress in the area of civil rights. We found that, in fact, you can legislate morality. While discrimination against minorities, against women, against the disabled, and against older persons has not been, by any means, completely eliminated, we know that it has not been condoned. And we have known prior to *Grove City* that our Federal Government had the means to enforce its policies of nondiscrimination.

The Supreme Court's decision in *Grove City College* v. *Bell* took us many steps backward in that move toward equal treatment for all Americans, for the *Grove City College* decision has undermined the Government's ability to enforce its own laws.

On the face of things, and particularly as it relates to public education, it would appear that California doesn't really need the Civil Rights Restoration Act. We have had for 10 years and more nondiscrimination laws in our State codes. Four of them were sponsored by my own union: A 1973 law relating to textbooks; a 1974 law prohibiting discrimination in course selection and assignment; a 1975 law prohibiting discrimination in all athletic programs—in fact, that language is a bit stronger than title IX—and also in 1975, a law prohibiting discrimination based on pregnancy. A 1982 law intitiated by Assemblyman Mike Roos consolidated and strengthened all the California laws which mirror title IX. We also have scores of other laws prohibiting discrimination in our State.

What Federal law gave us prior to *Grove City* was not only the law itself, but the mechanism to enforce the law as well. We don't have the same broad enforcement powers in our State laws.

As the law was understood and implemented prior to *Grove City*, Federal funds to an institution or agency, regardless of how they were targeted, could be withdrawn at any segment if the institution or agency was determined to be guilty of failure to provide equal access to all its services. I would also remind you that it was implemented and enforced and understood by administrations of both parties during those years. The penalty was infrequently applied, but the threat of its imposition brought compliance. And those who were the victims of discrimination knew they had a source of redress.

The Civil Rights Restoration Act restores enforcement and cohesiveness to four major civil rights laws. In this series of hearings, I am sure you heard countless examples—in fact, the previous speaker just laid some out for you—of the absurd practical results of implementing *Grove City.* Is discrimination unlawful only in federally financed buildings? May school districts treat students in State and local programs differently than students in similar programs that happened to be funded by the Federal Government?

When the law is absurd, people lose respect for the law. We ask you and your colleagues—and the President—to restore rationality to the law, and to continue the progress in civil rights so recently achieved. I would like to stress that word "progress." We have achieved progress, but we have, by no means, achieved equality of opportunity we all profess to desire. Civil rights legislation is not an anachronism, it is an ongoing necessity. The provisions of the Civil Rights Restoration Act must become once again the law of the land.

The CHAIRMAN. Thank you, Ms. Bergan.

[The prepared statement of Mary Bergan follows:]

PREPARED STATEMENT OF MARY BERGAN, LEGISLATIVE DIRECTOR CALIFORNIA FEDERATION OF TEACHERS, AFT, AFL-CIO

As the Legislative Director for the California Federation of Teachers and a member of the Women's Rights Committee of the American Federation of Teachers, I am here to express my union's strong support for the Civil Rights Restoration Act of 1985. If the equality of opportunity which we thought had been achieved by Title VI, by Title IX, by Section 504 and by the Age Discrimination Act is to be reality, it is crucial that the Civil Rights Restoration Act be enacted in this session of Congress.

The past two decades have been ones of steady progress in the area of civil rights. While discrimination against minorities, against women, against the disabled and against older persons has not been completely eliminated, we have known it was not condoned. And we have known that our federal government had the means to enforce its policies of non-discrimination.

The Supreme Court's decision in *Grove City College* v. *Bell* took us many steps backward in that move towards equal treatment for all Americans. For the *Grove City College* decision has underminded the Government's ability to enforce its own laws.

On the face of things, and particularly as relates to public education, it would appear that California doesn't really need the Civil Rights Restoration Act. We have had for ten years and more non-discrimination laws in our state codes. Four of them were sponsored by the California Federation of Teachers: a 1973 law prohibiting textbooks from "reflecting adversely" on particular groups, a 1974 law prohibiting discrimination in course selection and assignment, a 1975 law prohibiting discrimination in all athlethic programs, and, also in 1975, a law prohibiting discrimination based on pregnancy. Both 1975 laws, which reflect title IX and title VII respectively, are broader in their application than Federal law. A 1982 law initiated by Assemblyman Mike Roos consolidated and strengthened all the California laws which mirror title IX. We also have scores of other laws prohibiting discrimination in our State.

What federal law prior to *Grove City* gave us was not only the law itself, but the mechanism to enforce the law as well.

As the law was understood and implemented prior to *Grove City*, federal funds to an institution or agency, regardless of how they were targeted, could be withdrawn if any segment of the institution or agency was determined to be guilty of failure to provide equal access to all its services. The penalty was infrequently applied because the threat of its imposition brought compliance. And those who were the victims of discrimination knew they had a source of redress.

The Civil Rights Restoration Act restores enforcement and cohesiveness to four major civil rights laws. In this series of hearings, I know you have heard countless examples of the absurd practical results of implementing *Grove City*. Is discrimination unlawful only in federally financed buildings? Many school districts treat students in state and local programs differently than students in similar programs funded by the federal government?

When the law is absurd, people lose respect for the law. We ask you and your colleagues—and the President—to restore rationality to the law and to continue the progress in civil rights so recently achieved. The provisions of the Civil Rights Restoration Act must become—once again—the law of the land.

The CHAIRMAN. Ms. Gloria Kapp, National Steering Committee member of the National Women's Political Caucus.

Ms. KAPP. I will have to return with the 50 copies. I do have some copies, however.

The CHAIRMAN. Ms. Kapp, you may proceed.

Ms. KAPP. Thank you.

Honorable members of the committee and concerned citizens, I am representing the National Women's Political Caucus. For us, H.R. 700's passage this year is our top legislative priority. We feel that restoration of the full protection of the four laws under consideration and mentioned within that act is extremely essential if we are to obtain justice and equality for all citizens in this country, and if we are to continue to build on the gains that have been made since the implementation of each law.

The particular issue on which we have accumulated the most data is that of title IX and its effect. The disabled case, with which all of you are familiar, dealt with that particular law, but has now been extended to apply to the three other laws in question. The court ruled specifically that title IX's general ban on sex discrimination in education does not apply to all activities of the recipient institution, but only to the particular program receiving funds. The words interpreted by the court, "program or activity," appear in the other nondiscrimination laws and enforcement agencies that the executive branch is applying to this decision. The Justice Department further recommended this ruling to the Supreme Court, although all prior administrations, both Democratic and Republican, had interpreted the coverage of these laws to be institution-wide.

The following data provide some percentages and some comparisons of the impact of title IX since its implementation in 1972.

In 1971-72, the total bachelor's degrees awarded to women were 43.6 percent of the total bachelor's awarded in this country. By 1982-83, that had increased to 50.3 of the bachelor's degrees in this country going to women. There are even more dramatic increases in those areas that have been traditionally male fields. For example, the percentage of women receiving bachelor's degrees in physics increased from 14.8 to 25.7 percent. In biology, the increase was from 29.4 to 45.3 percent. And in engineering from a mere 1 percent in 1971-72 to 11.4 percent by 1982-83. The percentage of doctorates awarded to women increased from 15.8 to 32 percent. Likewise, there was a dramatic increase in the number of medical degrees awarded to women, from 9 percent of the total in the 1970's to 25 percent by 1982-83.

Women's increased participation in athletics in secondary schools has been even more dramatic, probably because in some cases, women were totally excluded from interscholastic athletics prior to the enactment of title IX. Between 1971 and 1978, the number of girls in interscholastic athletics in secondary schools increased by over 600 percent. In intercollegiate athletics, we have seen a comparable increase in the number of women participating and the percentage of women making up the total composition of college athletes, increasing from about 60,000 women in 1971 to about 150,000 by 1983. College athletic scholarships, which were practically nonexistent in 1972, are now available to over 15,000 women athletes.

While national progress has been great, there is still a wide range and wide variation from State to State and from school to school in the actual implementation of the nondiscrimination aspects of title IX. For example, although 26.8 percent of the total medical school graduates were women in 1982-83, this ranged from just over 15 percent at East Carolina Medical School to over half, 52.6 percent, at the State University of New York in Stony Brook.

Similar discrepancies exist in law school, with only 8 percent of the law school graduates at Brigham Young University in 1981-82, but over 60 percent of the law school graduates at Northeastern University being women in the same year.

Beyond the participation that has been demonstrated to have increased in athletics and in the degrees awarded women, we also believe that there has been a great deal of progress in reducing other less quantifiable forms of discrimination in the counseling received by women, in housing provided to women, in faculty hiring and in sexual harassment cases on college campuses.

While title IX applies only to sex discrimination in educational institutions, laws prohibiting discrimination against minorities, the disabled and the aging apply to a wider variety of institutions receiving Federal funds, such as hospitals, health services, and even corporations.

The impact of *Grove City* was immediate. A little over a week after the decision was handed down by the Supreme Court, the Department of Education dropped sex discrimination charges against the University of Maryland's intercollegiate athletics program. At least 63 other cases have been closed, limited or suspended in the Department of Education since the *Grove City College* decision; 44 of these related to title IX, 14 were section 504 violations, and 5 were title VI cases. Since the executive branch has demonstrated a marked reluctance to uphold and enforce the laws prohibiting discrimination against women, minorities, the disabled, and the aging, we must look to you, our elected representatives, to restore the laws and insist on enforcement.

I would like to thank you on behalf of the National Women's Political Caucus for holding hearings throughout the country, providing numerous citizens more information on the issue, and also for taking the time to hear our opinions and out views. We urge your committees to support H.R. 700 and to move it quickly through the House of Representatives, for the rights and the justices guaranteed all Americans under the Constitution cannot be realized until nondiscrimination laws are enacted and enforced throughout our society. Thank you.

The CHAIRMAN. Thank you, Ms. Kapp.

[The prepared statement of Gloria Kapp follows:]

PREPARED STATEMENT OF GLORIA KAPP ON BEHALF OF THE NATIONAL WOMEN'S POLITICAL CAUCUS

Passage of the Civil Rights Restoration Act, H.R. 700, is the highest legislative priority of the National Women's Political Caucus. This legislation is necessary to reverse the *Grove City College* decision of the Supreme Court which restricted the coverage of four civil rights laws—Title IX of the Education Amendments of 1972; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975.

The Court ruled, specifically, that Title IX's general ban on sex discrimination in education does not apply to all activities of the recipient institution, but only to the particular program receiving funds. The words interpreted by Court, "program or activity," appear in the other non-discrimination laws and enforcement agencies of the Executive Branch are applying this decision to the other laws.

The Justice Department recommended this ruling to the Supreme Court, although all prior administrations, Republican and Democratic, had interpreted the coverage of these laws to be institution-wide

Title IX of the Education Amendments of 1972, which is the law about which the National Women's Political Caucus has the most data and knowledge, has resulted in great improvement in educational opportunities for women.

The following data comparing the percentage of various types of degrees awarded to women in the 1971-72 school year with the percentage in the 1981-82 school year are tangible examples.

Total bachelor's degrees awarded women increased from 43.6% to 50.3% with the percentage of women receiving bachelor's degrees in physics increasing from 14.8% to 25.7%; in biology from 29.4 to 45.3%; in engineering from 1 to 11.4%; and in agriculture and natural resources from 5.5 to 31.3%.

The percentage of doctorates awarded women increased from 15.8 to 32%; medical degrees to 9 to 25%; and dental degrees from 1.1 to 15.4%.

Women's increased participation in athletics in secondary schools was even more dramatic, probably because women had been totally excluded from interscholastic competition in some states prior to the enactment of Title IX. Between 1971 and 1978, the number of girls in interscholastic athletics in secondary schools increased by over 600 percent. By 1980-81, 35.72% of the country's 5.1 million high school athletes were young women.

In intercollegiate athletics, the participation of women more than doubled between 1971 and 1983, increasing from 60,000 to approximately 150,000. College athletic scholarships were practically non-existant for women prior to Title IX; there are now 15,000.

While national progress has been great, opportunities still vary markedly. For example, the percentage of women participating in interscholastic high school athletics in 1980-81 was 50.1% in Iowa but only 22.9% in Mississippi. In California in 1978-79, enrollees in traditionally male vocational education courses were 23.4% women but in Kentucky women only comprised 5.4% of the enrollment in such courses.

School by school percentages also vary. While 26.8% of all medical school graduates were women in 1982-83, school percentages ranged from 15.3% at East Carolina Medical School to 52.6% at the State University of New York, Stonybrook. Law school graduates show a similar range for 1981-82 with only 8.2% women at Brigham Young University but over 60% women in Northeastern University's Law School Graduates.

In addition to participation in educational programs and athletics for which statistics are available, we know there has been progress in reducing other less quantifiable forms of discrimination in education—counseling, housing, faculty hiring, and sexual harassment.

While Title IX applies only to sex discrimination in educational institutions, laws prohibiting discrimination against minorities, the disabled and the aging apply to a wider range of institutions receiving federal funds, including hospitals and other health services, social services, transportation, recreational services, and corporations. While national data are not available to illustrate the impact of these laws, there is no doubt that they have reduced discrimination against minorities, the disabled and senior citizens.

The impact of the *Grove City* decision was immediate. A little over a week after the decsion, the Department of Education dropped sex discrimination charges against the University of Maryland's intercollegiate athletics program because the program did not receive direct federal funding. The Department had uncovered discrimination in several areas.

At least 63 cases have been closed, limited, or suspended in the Department of Education, which enforces these laws as they apply to education, since the *Grove City College* decision. Forty-four of these were Title IX cases; 14 were Section 504 violations and 5 were Title VI cases.

Since the Executive Branch has demonstrated a marked reluctance to uphold and enforce laws prohibiting discrimination against women, minorities, the disabled, and the aging, we must look to our elected representatives to restore the laws and to insist on enforcement.

We thank you for holding hearings throughout the country to acquaint the public with the facts. We urge your committees to support H.R. 700 and to move it quickly through the House of Representatives.

The rights and the justice guaranteed all citizens under the Constitution cannot be realized until non-discrimination laws are enacted and enforced throughout our society.

Submitted by: Gloria J. Kapp, Ph.D., National Steering Committee, National Woman's Political Caucus. Judith Hirshberg, Chair, National Women's Political Caucus of California.

The **Chairman**. The final witness on this panel is Ms. Virna Canson of the National Association for the Advancement of Colored People. Ms. Canson, we welcome you before the committee.

Ms. **Canson**. Thank you.

Chairman Hawkins and members of the committee, my name is Virna M. Canson. I am regional director of the West Coast Region NAACP. Our office is located in San Francisco. There are nine States which comprise the West Coast region: Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah and Washington. Within those States, there are more than 100 local units of the NAACP.

I would like to pause and acknowledge the presence of Mr. Carl Craig, political action chairman of the Altadena branch; Ms. Gloria Vincent, political action chairperson of the San Diego branch of the NAACP, home of Senator Pete Wilson; and Mr. Earl Davis, Jr., who is with the San Diego Voice Viewpoint.

We are indeed pleased that some Congresspersons and Senators from a majority of the our States in this region are among the sponsors of both the House and Senate measures. We are mindful of the absence of a number of our representatives, however, and we regret this. Hopefully, they will be encouraged to come aboard as the issues become clearer.

Your coming out among the people at this time is very, very important, and we applaud you for taking these steps to reach out. I might say that this morning the question was raised with regard to cutting costs, and I find it most interesting that we have the resources of the Federal Government available to reopen 43 cases regarding consent decrees and goals and timetables, yet we are crying poor now with regard to other kinds of needs. People need to know that there remain in Washington some representatives who are willing, ready and able to stand up for the preservation and advancement of civil rights.

There is no doubt about it that black people, other minorities, the poor women, the disabled and the aged are under seige from an insensitive administration. Never before has the President of the United States demeanded that high office by making personal attacks on individual civil rights leaders. Never before has the U.S. Civil Rights Commission been led by an ill-prepared, opportunistic exploiter who feeds on the selfishness and greed in our society.

The value of your presence extends far beyond the important consideration of the specific measures. Hopefully, the media will be as generous in its coverage of these joint efforts of your committees as it is in the coverage of those who are attacking civil rights.

The Civil Rights Act of 1964, the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1972, and the Age Discrimination Act of 1975 are all measures passed after much deliberation about the problems existing among groups of persons. The Congress took steps through orderly processes to bring relief.

This leadership has indeed cause re-examination of practices by the public and public sectors. It is my belief that the corporate community entered an important new era. The public sector, unfortunately, in some areas lagging strangely behind the private sector, did reflect changes for the better. The concept of non-discrimination as a guiding principle in the disbursement and utilization of public resources has served this Nation well.

NAACP in the West Coast region joined this issue of non-discrimination in the utilization of public resources in the courts more than 25 years ago. In *Ming* v. *Horgan*, Attorney Nathaniel S. Colley, Sr., a member of NAACP's National Board, successfully challenged discriminatory practices by realtors and developers who were discriminating in the sale of new FHA housing in Sacramento. Discriminatory practices in public housing were attacked by NAACP attorneys in Sacramento and San Francisco soon after that victory.

Our counsel advanced the theory that hands which dip into the Federal Treasury must come out dripping with democratic principles and practices. This is really the heart of the issue before you today.

The idea of letting offending parties maintain all their benefits in other programs—capital improvement, tax-exempt grants and other support services for the institution—while one small part of the overall programs is charged with discrimination is a mockery of any kind of justice, and certainly far from we believe to be the congressional intent of these measures which are now threatened.

How does one separate a part from the whole? How can one isolate any part of a program from the total? The contamination of racial and other prejudices is like any other disease which spreads to the entire body.

The *Grove City* decision poses a threat to our forward thrust to eliminate discrimination. NAACP and other groups have taken leadership in continuously putting before the Congress and the general public the concepts of fairness and justice. Our efforts alone are not enough to offset the Executive-led offensive against us. As Members of Congress, you were elected to represent constituencies just as the President. However, yours is a mission closer to the people. The responsibility and the authority to maintain a healthy system of checks and balances is yours. The needs of the people are such that we implore you to look past the vote of a majority of voters temporarily mesmerized by a popular President to more fundamental issues.

We support the measures before you. We are fearful of the Dole-Hatch compromose apprach, and urge your rejection of it. NAACP stands ready to join with you and others to raise the level of consciousness about the fight to preserve the threatened statutes.

I brought along an editorial which I would like to conclude my testimony with, done by Bob Maynard of the Tribute. I think it is particularly good. It is entitled "Restore Equal Protection."

> A new improved civil rights bill is ready for its first test in the marketplace of public opinion. Congressional hearings to sample reaction to the updated product is scheduled next month—this was written in February—in several cities, and the closest one will be Los Angeles on March 22. The bill is a better written, better defined version of a hasty response last year to an overly strict Supreme Court interpretation of laws forbidding discrimination against women. The Civil Rights Restoration Act of 1985, as the reworked version is titled, deserves passage by the Congress. The bills purpose is quite specific—to restore the broad scope of coverage of four major civil rights statutes whose range was severely narrowed by the Supreme Court's *Grove City* ruling last year. In that decision, the court ruled that anti-discrimination laws applied to institutions affect only those programs directly supported by Federal monies. Thus, a female student could not be barred from applying for Federal funds to help pay her college tuition, but once enrolled, paradoxically, she could be discriminated against in a program within the college not directly supported by Washington.
>
> The administration interpreted the new rule as extending beyond women to statutes outlawing bias on race or ethnic background, age and disability as well. While restoring coverage to the original scope intended by Congress, the new bill will not broaden penalties against proven discrimination. Those have remained the same since the passage of the 1964 Civil Rights Act. Since that was passed, specific cutoff of that portion of Federal funds if it supports a discrimination program or activity. "Fund termination remains pinpointed to the source of discrimination," explains San Jose Representative Don Edwards, who, along with Representative Augustus Hawkins of Los Angeles and Senators Edward Kennedy of Massachusetts and Lowell Weicker of Connecticut, are sponsoring the bill. Only the specific funds

which support discrimination within a State or local government agency, education institution, private organization or other entity are subject to withdrawal. The administration has advanced its own civil rights bill sponsored by Senate Majority Leader Robert Dole of Kansas. That bill would forbid discrimination in educational facilities only, an inadequate response to a broader problem.

At a time when the White House is leading the Supreme Court, the Justice Department and the U.S. Civil Rights Commission toward a narrow interpretation of vital civil rights statutes, Congress must begin to block its path. Otherwise, millions of Americans still vulnerable to arbitrary discrimination may find themselves back where they were before in 1964, outside the equal protection and enforcement of the law.

I thank you very much for this opportunity, and I am confident that you will move aggressively to not only restore the dignity of the protected classes, but to extend that in the interest of all Americans. Thank you.

The CHAIRMAN. Thank you.

[The prepared statement of Virna M. Canson follows:]

PREPARED STATEMENT OF VIRNA M. CANSON, REGIONAL DIRECTOR, WEST COAST REGION NAACP

Chairman Hawkins, members of the Joint Committee. My name is Virna M. Canson. I am Regional Director of the West Coast Region NAACP. Our office is located in San Francisco, California. There are nine states which comprise the Western Region: Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah and Washington. Within those states there are more than one hundred local units of the National Association for the Advancement of Colored People.

We are pleased that some Congresspersons and Senators from a majority of the states in our Region are among the sponsors of both the House and Senate measure. We are mindful of the absence of a number of our representatives, and we regret this. Hopefully, they will be encouraged to come aboard as the issues become clearer for them.

Your coming out among the people at this time is very, very important, and we applaud you for taking these steps to reach out. The people need to know that there remain in Washington some representatives who are willing, ready and able to stand up for the preservation and advancement of Civil Rights.

There is no doubt Black people, other minorities, the poor, women, the disabled and the aged are under seige from an insensitive administration. Never before has the President of the United States demeaned that high office by making personal attacks on individual Civil Rights leaders; never before has the U.S. Civil Rights Commission been lead by an ill prepared, opportunistic, exploiter who feeds on the selfishness and greed in our society.

The value of your presence extends far beyond the important consideration of the specific measures. Hopefully, the media will be as generous in its coverage of these joint efforts as it is in its coverage of those who are attacking civil rights.

The Civil Rights Act of 1964, the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1972 and the Age Discrimination Act of 1975 are all measures passed after much deliberation about the problems existing among groups of persons. The Congress took steps through orderly processes to bring relief.

This leadership has indeed caused re-examinations of practices by the public and private sectors. It is my belief that the Corporation entered an important, new era. The public sector, in some instances lagging strangely behind the private sector, did reflect changes for the better. The concept of non-discrimination as a guiding principle in the disbursement and utilization of public resources has served the nation well.

NAACP, in the Western Region, joined this issue of non-discrimination in the utilization of public resources in the courts more than 25 years ago. In *Ming* v. *Horgan*, Attorney Nathaniel S. Colley Sr., member of NAACP's National Board, successfully challenged discriminatory practices by realtors and developers who were discriminating in the sale of new FHA housing in Sacramento.

Discriminatory practices in public housing were attacked by NAACP attorneys in Sacramento and San Francisco soon after that victory.

Our Counsel advanced the theory that hands which dip into the Federal Treasury must come out dripping with democratic principles and practices.

This is the heart of the issue before you today.

The idea of letting offending parties maintain all their benefits in other programs, in capitol improvement, in tax exempt grants and other support services for the institution while one small part of the overall programs is charged with discrimination is mockery of any kind of justice and certainly far from the Congressional intent of the measures now threatened.

How does one separate a part from the whole? How can one isolate any part of a program from the total? The contamination of racial and other prejudices is like any other disease which spreads to the entire body.

The *Grove City* decision poses a threat to our forward thrust to eliminate discrimination. NAACP and other groups have taken leadership in continuously putting before the Congress and the general public the concepts of fairness and justice.

Our efforts alone are not enough to offset the Executive led offensive against us. As members of Congress you were elected to represent constituencies just as the President. However, yours is a mission clear to the people. The responsibility and the authority to maintain a healthy system of checks and balances is yours.

The needs of the people are such that we implore you to look past the vote of a majority of voters temporarily mesmerized by a popular president, to more fundamental issues.

We support the measures before you. We are fearful of the Dole-Hatch compromise approach and urge your rejection of it.

NAACP stands ready to join with you and others to raise the level of consciousness about the fight to preserve the threatened statutes.

Thank you for this opportunity to present testimony.

The CHAIRMAN. Ms. Canson, what is the source of the editorial that you referred to? You said the Tribune; which Tribune?

Ms. CANSON. It used to be the Oakland Tribune, Mr. Hawkins. It is the Tribune, dated February 28, 1985.

The CHAIRMAN. Thank you.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. Ms. Canson, don't sit down.

About 2 months ago, the two Democratic appointees to the U.S. Civil Rights Commission, Mary Frances Berry and Blandina Cardenas Ramirez, filed the minority report to a commission report analyzing the impact of the *Stotz* case, which applied to hiring in the Memphis police department and fire department. The Berry and Ramirez report emphatically stated that civil rights laws were not intended to apply to all Americans, but were just intended to apply to a few Americans. Do you agree with that statement?

Ms. CANSON. First, I would have to—not that I doubt your representation of the statement, but it is always safe to read it and get your own feeling about the words. My not having read it, I am at a disadvantage.

In the broader sense, civil rights laws and civil rights activities do, in fact, apply to and benefit everybody. When the NAACP got started 75 years ago, little did we dream our work would produce the kind of results for a major corporation could consider itself a person and, thus, plead his case under the 14th amendment. I would suggest—here again not having read that, I would be reluctant to draw a conclusion. Both of those persons have, in fact, struggled to try to maintain some integrity under difficult circumstances.

Mr. SENSENBRENNER. I would just point out that the Washington Post, which is neither a mouthpiece for the Reagan administration, nor conservative Republican principles in general, did strongly criticize the two commissioners for making this statement and, I believe, correctly pointed out that the moral underpinnings of the civil rights movement have been to protect the civil rights of all Americans and that civil rights laws are, in effect, color blind. Unfortunately, according to the Post editorial, the two commissioners apparently don't feel that that is the case.

Since my time is limited, I would like to ask all of the panelists, including you, Ms. Canson, whether you support the narrower treatment and narrower coverage that this bill provides the public sector than it does provide the private sector?

Ms. CANSON. If you will recall, in my testimony, I took a little swipe at the public sector, because I feel that if, in fact, we are operating upon the people's resources, i.e. the people's capital, we are to move ahead more aggressively to take—if, in fact, there are risks involved in obeying the laws of the land, we should, in fact, move ahead.

Mr. SENSENBRENNER. So the answer to the question is, "No; you don't support the different treatment that this bill provides."

Ms. CANSON. I would tell you, sir, I would prefer to give you my answer, long though it may be. I am committed to the proposition that the evil and the disease of segregation and racial bigotry is such that anyone, public or private, ought to be affected by it equally. I think that we are far past the stage where we quibble over whether or not the Department of Justice is more racist than the corporation. It is the contamination. I would implore Congress to move aggressively to apply equally, or apply as the situation requires, its powers.

Mr. SENSENBRENNER. May I get an answer to my question from the other panelists?

The CHAIRMAN. Do you think you could do that in 5 minutes? Are you going to give the panelists an opportunity to discuss the question? I think they may have misunderstood.

Mr. SENSENBRENNER. H.R. 700 provides substantially narrower coverage in the public sector than it does in the private sector. For example, in the public sector, if one department of the city government receives Federal aid, it is covered, but the other departments are not covered unless they receive Federal aid from another source. This morning I used the example of the police department being brought in if it received Federal funds, and the health department exempted if it didn't. Whereas in the private sector, if one entity of a corporation receives Federal funds, then the whole corporation, even those entities that don't receive Federal funds, are brought underneath the coverage of this bill.

The CHAIRMAN. Do you think the question could be rephrased? I am not trying to suggest words for you, but I am trying to get an easier explanation from them in terms of would they favor the widest possible coverage permissible by——

Mr. SENSENBRENNER. I am asking the panelists whether they believe in different strokes for different folks, because there are different strokes in the public and private sectors.

The CHAIRMAN. Now you are interpreting an answer for the panel. Obviously that is loaded. They obviously wouldn't agree to that.

Mr. SENSENBRENNER. Mr. Chairman, I am just reading the bill. The bill does have a substantially narrower application in the public sector where taxpayers' dollars are used throughout, than in the private sector where they are not. I am wondering if the panelists support a uniform application in both public and private sectors.

The **Chairman**. We will transcend the 5-minute rule, in this instance, and allow——

Mr. **Jeffords**. I will yield my 5 minutes.

The **Chairman** [continuing]. Each panelist to respond to the question to the best of their ability, if that is acceptable.

Does any other member of the panel wish to respond to the question of Mr. Sensenbrenner?

Ms. **Campbell**. I would, Mr. Chairman. I am Renee Campbell.

I am not exactly sure which section of the bill you are specifically referring to, and I probably would like to know exactly what you are talking about. But let's talk philosophically for a moment about the basic intent of the bill.

From the Girls Club standpoint—I think from all people concerned, really, from an American standpoint—it seems to me that if the bill seeks to impose a heavier burden or a heavier test on the private sector rather than on the public sector, then we should take a look at that, and then take that into consideration, take into consideration the immunities that is often accorded the public entities. A policeman may be immune from prosecution or civil suits for any number of reasons, while if a corporation is a recipient, or certainly an educational institution is a recipient of Federal dollars, they would not be.

It is my view that we need to focus in on society as a whole and not to segregate or to in any way impose lesser burdens on any segment of our society, be it the public sector or the private sector. To the extent this bill does that, however, I think that it is merely an amalgamation or taking into consideration again the different immunities that are afforded to governmental institutions. But it is imperative, it is of utmost importance, that the private side of our society has controls placed upon it when it is the recipient of Federal dollars.

Mr. **Sensenbrenner**. Do you think Congress ought to be immune, which it presently is?

Ms. **Campbell**. Do I think Congress should be immune?

Mr. **Sensenbrenner**. Yes.

Ms. **Campbell**. You can't ask that question in a vacuum. You must ask the question in the context of a specific factual circumstance. Certainly not. If a Congressman is a perpetrator of sexual harassment to someone on his staff, absolutely not, there should be no immunity. However, if we are talking about a different question, a different set of facts, certainly something like whether or not a particular private or personal need of the Congressman is going to be met by a particular person—for example, a housekeeper—then maybe not. I mean, maybe there should be immunity.

I can't really respond to your question in that it is not narrow enough. It doesn't give me enough guts on which to apply, you know, this bill in its application to see how it will work through it.

The **Chairman**. Mr. Mornell.

Mr. **Mornell**. I am Eugene Mornell from the Los Angeles County Human Relations Commission.

This bill, in its form last year, was approved in concept by the Los Angeles County Board of Supervisors, but they had specific objections to portions of the bill last year. I think the section you are talking about is one of those portions. Probably this bill would not have the support of the Los Angeles County Board of Supervisors were not the provisions for government more narrow than those for the corporate sector.

Politics, as you know, is the art of the possible. I think we would rather have this bill, imperfect as you may find it, than no bill.

Mr. **SENSENBRENNER**. I am looking at it from a political context, too, and this bill doesn't have the support of business or farming organizations because of the broader coverage. I guess, from your standpoint as a county official, talking to county officials, you would like to see a narrower application in order to get county official support and the National Association of Counties' support. I guess the point that you made simply reemphasizes my point that we are viewing specific legislation here, and we better draft it very carefully so that it is politically feasible to pass through the Congress, and so we don't get any more court decisions like *Grove City*.

Mr. **MORNELL**. I think that is very important. It is important that we have a piece of legislation that broadens the interpretation of *Grove City* and restores us to where we were before. Whether that includes different provisions for the public and private sectors, I think, is a committee decision.

Ms. **BERGAN**. I can be brief on this.

First of all, local education agencies don't have that narrowness under the law, as I read it. So, looking for other folks that I represent who do, in fact, work for both private and public entities, certainly we would think that a broad coverage is appropriate for everyone, including yourselves.

However, I want to reiterate that half a loaf is better than no loaf, and I don't see this as half a loaf either. I see it as most of the way. I would hope that no one would use the difference in coverage—which I think should be discussed and, if possible broadened—but that differential should not be used by anyone as an excuse for not supporting the legislation.

Ms. **KAPP**. I am Gloria Kapp.

I will speak about two situations of which I am familiar and how these interpretations might apply. I share the views of the previous speakers, in that I believe this law needs to be carefully considered. It ought to be the best that all you and all of us can come up with, and I am assuming that is why the hearings are being held.

However, in the county of Los Angeles, for example, which is, I understand, one of the largest counties, perhaps, the largest county, in the country. One agency in the county of Los Angeles is many times the size of many corporations that benefit from Federal dollars or receive Federal funds. Therefore, I think it becomes a matter of interpretation as to whether the law is really less stringent when applied to public agencies.

Professionally, I am an educator. I am currently the director of student financial services at a local State university. At the moment, given the *Grove City* interpretation, my department, which administers approximately $8 million in Federal funds to college students, is responsible for following all of the regulations of title IX, plus a host of other Federal regulations that I know you are familiar with as well.

The current interpretation in the *Grove City College* case in particular says that if the only department in a university or a college receiving Federal funds is that of student financial aid, then that is the only department that has to follow those regulations. This law does bring it back to the interpretation of title IX that stood for many years, which was that the entire university or the entire agency, being one college or one university, is still responsible throughout for following those regulations.

So I think it may be a matter of interpretation. I understand that it is an important issue, and one that needs to be carefully considered. But I really think we need to move ahead and adopt the legislation, make the best decision possible under the circumstances, and I do not feel that it necessarily gives the public sector an edge over the private sector, given the current wording of the law.

Mr. Bovitz. My name is Carole Bovitz. I am the president of the AAUW CSD.

I was sitting here trying to reflect on an intelligent, well-thought answer. I am the kind of person who likes to sleep on something that sounds as complicated as the question and read it in detail, as some of the former speakers said.

However, just to be brief, I do think, too, that we need to move ahead. I do support the broader coverage interpretation. I think I had that in my statement.

The Chairman. Yes, Ms. Canson.

Ms. Canson. I would just like to recognize one other political action person, I think. That is Ms. Aldra Henry. We had the president of the Los Angeles branch. Aldra is here as our political action chairman. Thank you very much.

The Chairman. Thank you.

Mr. Jeffords.

Mr. Jeffords. Mr. Chairman, I think for the information of the people who are here, and subject to being criticized by members of the panel, it is my understanding that the situation of coverage is that, as of right now, with the exception of section 504, even the Federal Government is not covered by titles IX and VI and others. That is due to rulings by the Attorney General, I believe. Thus, we do have that kind of hypocritical situation in my mind of not covering the agencies that are dealing, to a large extent, with some of the problems that we are trying to get at here.

It is also my understanding that the reason we are not really expanding this in the area of the States and local governments to the extent we do the private industry is that it is really a political judgment and trying to get the Governors on our side so they won't complain that their own government is so big that they control it, and they don't want to have the tail wagging the dog. But whether or not we should make those kinds of decisions is an item which I think this committee has to discuss and understand and be ready to try to defend in that event that we do make it.

Thank you, Mr. Chairman.

The Chairman. Thank you.

The Chair wishes to explain his position, because I think the discussion is somewhat ambiguous, and because I think the witnesses do not fully understand the nature of the question.

The act rightfully is labeled the Restoration Act. Personally, I would like to see the Congress covered. I would also like to see State governments covered. We are not submitting that question to the witnesses, largely because we only want to restore the law to its pre-*Grove City* status, and not get into whether the Congress should be covered. There are several bills pending in the Congress to do so, and I think the issue should be addressed in those bills. H.R. 700, is a pure attempt to restore the law to the pre-*Grove City* law as we understand it. Now we may differ on that particular situation. But it is not the intent of the sponsors of the bill to get into issues that we may favor as individuals, but which would be in conflict with that restorative objective.

I am sure that many of the witnesses would like to see the State governments covered as well. If I interpret what their answers were, it is that they favor the broadest possible coverage, but have some reservations about that. I think that each of them said that they favor broader coverage, not narrower coverage, but within the context of restoring the law. Now if any one of the witnesses disagree with what I understood to be their interpretation, we will certainly give them the opportunity to say so. If not, the Chair assumes that they favor the broadest possible coverage, but do not favor doing something that goes beyond the restoration of the law as they understood it before *Grove City*.

Mr. Hayes.

Mr. **Hayes**. Just a couple of brief comments, Mr. Chairman. Thank you.

Mr. Canson, I notice you say, "Our counsel advanced the theory that hands which dip into the Federal Treasury must come dripping with democratic principles and practices." I agree with your theory, but in practice it just doesn't work that way.

I am reminded of the kind of situation that exists today. I think I saw where two corporate entities of General Dynamics as a corporation and are dripping, apparently—because they are under investigation—with some of our Federal money. I would like to see some of that money, instead of going into those directions, converted back for some of the programs that we talked about.

The other comment I wanted to make is about your characterization of the voters being temporarily mesmerized. I hope that period is soon over. But I haven't seen anything to really indicate it. Your optimism that you suggest should certainly lead to the passage of the kind of legislation that we talked about because the outcries of the people would make it possible, and also lead to the restoration of some of the programs that we have taken away from people who need the help and need the support—by the suggestions of this administration in order to reduce the size of the deficit.

So these are the kinds of things that I hope this temporariness that you talk about in terms of mesmerization will soon come into fruition and we will see that kind of outcry from the people.

Ms. **Sharp**. Thank you.

The **Chairman**. Thank you.

If there are no further questions, we wish to thank all of the witnesses in this panel for their contribution this afternoon. We certainly wish you the best wishes for the work that you are performing on behalf of your organizations. Thank you very much.

The next panel will consist of Ms. Teresa Fay Bustillos, staff attorney, Mexican American Legal Defense and Education Fund; Ms. Sylvia Drew Ivie, National Health Law Center; Mr. Robert Gregg, president of the Association of American Physicians and Surgeons; Ms. Barbara Waxman; and Dr. Carol Gill.

Will those witnesses please be seated in the front row.

Ms. Bustillos, I think you were first mentioned. We will have your testimony at this point.

STATEMENT OF TERESA FAY BUSTILLOS, STAFF ATTORNEY, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, LOS ANGELES, CA; SYLVIA DREW IVIE, NATIONAL HEALTH LAW CENTER, LOS ANGELES, CA; ROBERT GREGG, PRESIDENT, ASSOCIATION OF AMERICAN PHYSICIANS AND SURGEONS, COVINA, CA; BARBARA WAXMAN, VENICE, CA; AND CAROL GILL, PH.D., VAN NUYS, CA

Ms. Bustillos. Mr. Chairman and members of the committee, my name is Teresa Fay Bustillos, and I am a staff attorney with the Mexican American Legal Defense and Educational Fund from the Los Angeles office. MALDEF is a national advocacy and litigation organizations which protects the civil rights of Hispanics primarily in the areas of education, employment, voting rights, immigration, and health. We appreciate the opportunity to address some of the access to health issues raised by the recent decision of the U.S. Supreme Court in *Grove City* v. *Bell*, and to explain our support for H.R. 700.

We are deeply concerned about the effects upon the Hispanic community of the holding in *Grove City* in the area of access to health care. It is MALDEF's opinion that H.R. 700 is necessary if civil rights enforcement in the area of health care is to continue in any meaningful fashion.

The importance of H.R. 700 to Hispanics, other minority groups, and the elderly can be clearly seen in light of recent trends in the health care provider industry.

Three trends in particular are of note. The first trend is the unbundling of health care services. Prior to 1982, the hospital was by and large considered the heart of health care services. However, due to changes in the manner in which payments for health care services are being handled, it is becoming less cost effective for hospitals to centralize all patient diagnostic and treatment in a hospital setting.

The second trend is the private station of health care and the overall decline in the number of hospitals. Most experts agree that the number of hospitals has consistently declined since 1970, and that this trend is expected to continue. In the 1970's 10 to 15 percent of the hospital beds were owned by proprietary health systems. By the year 2000 it is anticipated that 85 percent of the hospital beds will be owned by proprietary health systems.

The third trend is toward organized prepaid health systems, such as the Kaiser Foundation. It is anticipated that, by the 1990's, 8 out of 10 hospitals will be some derivative of the prepaid health model, such as Kaiser.

These three trends—the unbundling of hospitalization services, privatization of hospitals, and the trend to prepaid health systems—may impose an adverse selection system upon the poor and the elderly of this society. The private hospital and prepaid plan hospital will be basically competing to provide health care to the working individual in their twenties and thirties who has some form of medical insurance and generally fits within the group with a lower incidence of requiring expensive medical care. The second group which will be taken care of by hospitals motivated by profit margin are the remainder of the work force with medical insurance, but generally who incur greater medical costs.

The remaining groups are those which qualify for Medicaid or Medicare and those who do not. In these latter groups are where we find the elderly, the poor, and many minorities. As the competition level increases and the privitization trend increases, both indigents who qualify for Medicaid and those who do not are finding it increasingly difficult to obtain care from private providers. County hospitals are finding it increasingly difficult to care for the indigent and survive financially. From 1965 to 1980, 23 county hospitals in California have closed, and others were sold, leased, or turned over to private management firms.

What is disturbing to Hispanics in particular from these trends are the incidents of bumping and refusal of treatment by private hospitals of Hispanics who are indigent and monolingual—Spanish—or of limited English speaking ability.

In 1979 at Queen of Angels Hospital in Los Angeles, for example, a Hispanic male was taken to the hospital with stab wounds at 7 p.m. Upon arrival, he was not treated, but left unattended while his wife was interrogated as to why they did not speak English well, what was their nationality, how long had they been in the United States, and other such questions. The man died in the waiting room, still unattended, at 9:45 p.m. He turned out to be a U.S. citizen and potentially eligible for Medicaid benefits.

Approximately half the hospitals in the United States have received Federal Hill-Burton construction and modernization grants. In return, they promised to provide a certain level of uncompensated care and community service. This promise has long been ignored. The poor, especially monolingual Hispanics, are unaware of Hill-Burton, and private hospitals routinely turn away people they are obligated to care for. In December 1978, an 11-month-old Hispanic boy died shortly after being refused admittance by a hospital in Dimmitt, TX, because his parents did not have a $400 preadmission deposit. The hospital was a Hill-Burton facility.

The problem for Hispanics who are of limited English-speaking ability and monolingual Spanish-speaking, are that private hospitals concerned with profit who will not treat individuals they perceive to be undocumented, since they do not qualify for Medicaid or Medi-Cal, and historically are indigent, may operate from a set of assumptions about who is and who is not lawfully here in the United States. If a Hill-Burton hospital routinely engages in interrogating Hispanics about their status in this country and refuses treatment to Hispanics who are either of limited English speaking ability or monolingual Spanish-speaking ability, a national origin cause of discrimination under title VI may be the appropriate remedy. However, under *Grove City,* if the Hill-Burton funds were only used to construct a children's ward, and/or the hospital is sufficiently fragmented, these Hispanics who were seeking emergency aid may have no remedy.

According to the 1980 census, 38 percent of the adults in Los Angeles County are monolingual Spanish speaking. In Los Angeles County, one-third of all Hispanic households make under $10,000, the poverty threshold. The impact upon Hispanics of private hospitals with a duty to care for a certain percentage of indigent, who engage in restrictive screening mechanisms based upon national origin characteristics, when combined with the decline in county hospitals, could be great without some effective mechanism for redress.

As more and more hospitals become private and there are less hospitals available, especially in minority communities, Hispanics with limited English speaking abilities may be forced to seek care in increasing numbers in private hospitals. Private hospitals may, under such circumstances, simply offer no bilingual services as a deterrence mechanism and cost-saving device. If the percentage of Hispanics in the delivery area would require bilingual services, such practices may be tantamount to national origin discrimination, but may be unable to be addressed due to the pinpointing requirement imposed by *Grove City* and the trend for the unbundling of health care services.

Patient dumping is becoming a concern as more hospitals are going private and county hospitals are decreasing in number. In Los Angeles County alone in 1979, 21,000 patients were dumped from private hospitals to publicly supported county facilities.

Hospitals are required to treat emergency cases. Because the term "emergency" is difficult to define, and because some private hospitals are intent on refusing to treat those they perceive to be undocumented persons unless they have cash on hand, regardless of their medical condition, it results in the turning away of the documented and the undocumented poor.

While no statistics are available on the number of minorities, both undocumented and citizens, who are dumped, it seems clear that, at least to some degree, dumping is related to ethnicity. For example, the Ventura County Hospital in California is the primary provider of medical care to both the uninsured and Medicaid recipients in that county. At least one ambulance service in the county, when called to pick up a monolingual Hispanic, will automatically bypass the private hospitals and take the patient to the county facility because that is probably where the patient will end up.

MALDEF continues to believe that title VI of the 1964 Civil Rights Act, as originally proposed and enacted by Congress, can and should prevent the flow of Federal financial funds to those institutions that engage in discriminatory practices. Without recipient-based coverage, it will be impossible to provide individuals effective protection against civil rights violations.

Thank you very much.

Mr. **Jeffords** [presiding]. Thank you, Ms. Bustillos.

[The prepared statement of Theresa Fay Bustillos follows:]

PREPARED STATEMENT OF TERESA FAY BUSTILLOS, STAFF ATTORNEY, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Mr. Chairman and members of the Committee, my name is Teresa Fay Bustillos and I am a staff attorney with the Mexican American Legal Defense and Educational Fund, Los Angeles Office. MALDEF is a national advocacy and litigation organization which protects the civil rights of Hispanics primarily in the areas of education, employment, voting rights, immigration and health. We appreciate the opportunity to address some of the access to health issues raised by the recent decision of the United States Supreme Court in *Grove City College* v. *Bell*, 104 S.Ct. 1211 (1984), and to explain our support for HR 700.

We are deeply concerned about the effects upon the Hispanic community, of the holding in *Grove City*, in the area of access to health care. It is MALDEF's opinion that HR 700 is necessary if civil rights enforcement in the area of health care is to continue in any meaningful fashion.

The importance of HR 700 to Hispanics, other minority groups and the elderly can be clearly seen in light of recent trends in the health care provider industry. There are two factors we see today which have an impact in the manner in which health care providers are being organized and as a result, health care will be delivered. First, there is an unwillingness to continue the current escalation of costs in providing health care. Second, health care is now being delivered in a more fragmented manner. For example, in 1970, an individual who entered a hospital for examination and treatment, was likely to see the doctor in the hospital, have x-rays and other diagnostic services performed in the hospital, receive any recommended course of treatment in the hospital, and obtain any necessary prescriptive medication from the pharmacy located in the hospital. In 1985, the same individual is likely to see a doctor in a clinic or urgent care center, have x-rays and other diagnostic services performed in some other location, and obtain any prescriptive medication in a pharmacy which is not physically a part of the clinic.

These two factors have contributed to three trends which can be seen in the health care field. The first trend, is the "unbundling of services". Prior to 1982, the hospital was by and large considered the heart of health care services. However, due to changes in the manner in which payments for health care services are being handled, it is becoming less cost effective for hospitals to centralize all patient diagnostic and treatment in the hospital setting.

One of the changes which occurred in 1982, which may directly impact the hospital structure is Medi-Care payments by DRG—diagnostic related groups. Prior to 1982, health care services were billed separately for each service provided. Under DRG the hospital is paid by DRG category which breaks illnesses into 467 diagnostic related groups. No matter how long a patient is hospitalized, the hospital is paid the same for all patients in the same DRG. A hospital with fragmented services under the DRG payment plan may be able to qualify for separate DRG payments for each fragmented service.

The second trend is the privitization of health care and the overall decline in the number of hospitals. Most experts agree that the number of hospitals has consistently declined since 1970 and this trend is expected to continue. In the 1970's 10–15% of the hospital beds were owned by proprietary health systems. By the year 2000 it is anticipated that 85% of the hospital beds will be owned by proprietary health systems.

The third trend is toward organized prepaid health systems, such as, the Kaiser Foundation. It is anticipated that by the 1990's 8 out of 10 hospitals will be some derivative of the prepaid health model.

These three trends, the unbundling of services, privitization of hospitals and the trend to prepaid health systems may impose an adverse selection upon the poor and elderly of this society. The private hospital and prepaid plan hospital will be basically competing to provide health care to the working individual in their twenties and thirties who has some form of medical insurance and generally fits within the group with a lower incidence of expensive medical care. The second group which will be taken care of by hospitals motivated by profit margin are the remainder of the workforce with medical insurance but generally incur greater medical costs.

The remaining groups are those which qualify for Medicaid or Medicare and those who do not. In these latter groups are where we find the elderly, the poor and many minorities. As the competition level increases and the privitization trend increases, both indigents who qualify for Medicaid and those who do not are finding it increasingly difficult to obtain care from private providers.[1] County hospitals are finding it increasingly difficult to care for the indigent and survive financially. From 1965 to 1980 23 county hospitals in California have closed, and others were sold, leased or turned over to private management firms.[2]

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[1] Chicano Health Institute, *Op. Cit.*, Pg. 41, Indigent Care Commission, *Op. Cit.*, pg. 10.

What is disturbing for Hispanics, in particular, from these trends, are the incidents of bumping and refusal of treatment by private hospitals of Hispanics who are indigent, and monolingual—Spanish—or of limited English speaking ability.

In 1979, a three year old boy from Colusa, California had to wait several hours in the emergency room of a private hospital with a "severely" broken arm because the orthopedists on call refused to come and care for the child. The child, Pedro, is the son of an indigent farmworker and according to the local newspaper, "the three orthopedists in Marysville . . . allegedly have decided not to treat indigent emergency cases". After waiting two and a half hours in the emergency room, Pedro was transferred to the County hospital.[3]

In 1979 at Queen of Angels Hospital in Los Angeles, a Hispanic male was taken to the hospital with stab wounds at 7:00 p.m. Upon arrival he was not treated but left unattended while his wife was interrogated as to why they did not speak English "well", and what was their nationality, how long were they in the United States, etc. The man died in the waiting room at 9:45 p.m. He turned out to be a United States citizen.[4]

Approximately half the hospitals in the United States have received federal Hill-Burton construction and modernization grants. In return, they promised to provide a certain level of "uncompensated care" and "community service". This promise has long been ignored. The poor, especially monolingual Hispanics, are unaware of Hill-Burton, and private hospitals routinely turn away people they are obligated to care for. In December, 1978, an eleven-month old Hispanic boy died shortly after being refused admittance by a hospital in Dimmitt, Texas because his parents did not have a $400 preadmission deposit. The hospital was a Hill-Burton facility.[5]

The problems for Hispanics who are of limited English speaking ability and monolingual-Spanish speaking, are that private hospitals concerned with profit who will not treat individuals they perceive to be undocumented, since they do not qualify for Medicaid or Medical, and historically are indigent, may operate from a set of assumptions about who is and who is not lawfully here in the United States. If a Hill-Burton hospital routinely engages in interrogating Hispanics about their status in this country, and refuses treatment to Hispanics who either are of limited English speaking ability or monolingual-Spanish speaking ability, a national origin cause of discrimination under title VI may be the appropriate remedy. However, under *Grove City,* if the Hill-Burton funds were only used to construct a childrens ward, and/or the hospital is sufficiently fragmented, these Hispanics who were seeking emergency aid, may have no remedy.

According to the 1980 census, 38% of the adults in Los Angeles County are monolingual-Spanish speaking. In Los Angeles County, one-third of all Hispanic households make under $10,000.00, the poverty threshold. The impact upon Hispanics of private hospitals, with a duty to care for a certain percentage of the indigent, who engage in restrictive screening mechanisms based upon national origin characteristics, when combined with the decline in county hospitals, could be great without some effective mechanism for redress.

As more and more hospitals become private and there are less hospitals available, especially in minority communities, Hispanics with limited English speaking abilities may be forced to seek care in increasing numbers in private hospitals. Private hospitals may under such circumstances simply offer no bilingual services as a deterrence mechanism and cost saving device. If the percentage of Hispanics in the delivery area would require bilingual services, such practices may be national origin discrimination, but may be unable to be addressed due to the pinpointing requirement imposed by *Grove City* and the trend for unbundling health care services.

Patient dumping is becoming a concern as more hospitals are going private and County hospitals are decreasing in number. Private physicians provide almost no free care to indigents and private hospitals throughout the country transfer or "dump" uninsured patients onto local public facilities. In Los Angeles County alone in 1979, 21,000 patients were "dumped" from private hospitals to publicly-supported county facilities.[6]

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[2] *Id.*

[3] Craig Jarvis, "Painful Plight Of Injured Boy, Common for Area Indigents". Morning Herald, February 9, 1979.

[4] Geraldine Dallek, Clearinghouse Review, August/September 1980.

[5] Hospital Head Indicted In Death, *Los Angeles Times,* December 29, 1978.

Hospitals are required to treat emergency cases. Because the term "emergency" is difficult to define and because some private hospitals are intent on refusing to treat those they perceive to be undocumented persons unless they have cash on hand (regardless of their medical condition), the turning away of the documented and undocumented poor often leads to suffering, and, in some instances, death.

While no statistics are available on the number of minorities (both undocumented and citizens) who are "dumped", it seems clear that, at least to some degree, "dumping" is related to ethnicity. Ventura County General Hospital in California is the primary provider of medical care to both the uninsured and Medi-Caid recipients in that county. At least on ambulance service in the county, when called to pick up a monolingual Hispanic, will automatically bypass the private hospitals and take the patient to the county facility because "that is probably where the patient will end up".[7] Employees of the county hospital emergency room used to give out a "Dump of the Month" award to the medically most dangerous transfer case.[8]

We believe that if the *Grove City* ruling is allowed to continue, litigation decisions issued by the Attorney General would only be done on a program-specific basis and would not reflect Congress' original intent to prohibit discrimination in recipient institutions of federal financial assistance. MALDEF continues to believe that Title VI of the 1964 Civil Rights Act, as originally proposed and enacted by Congress, can and should prevent the flow of federal financial funds to those institutions that engage in discriminatory practices. Without recipient-based coverage it will be impossible to provide individuals effective protection against civil rights violations.

Mr. JEFFORDS. Our next witness is Sylvia Drew Ivie, the National Health Law Center, Los Angeles, CA.

Ms. IVIE. Good afternoon.

I am the director of the Legal Services Support Center in Health Law, which was established in 1969 to assist minorities and the poor in their quest for comprehensive and quality health services. During the Carter administration, I took a leave of absence from this program to head the Office for Civil Rights in the Department of Health and Human Services.

In both of those capacities, I have attempted to enforce civil rights laws protecting the rights of minorities and the handicapped and women to access to health care. My testimony today is directed to the area of title VI enforcement. You will be hearing from advocates in the 504 area after I speak.

The Federal Office for Civil Rights came into existence in May 1967 under HEW Secretary John Gardner. The Office for Civil Rights is best known nationally for its efforts in the school desegregation area, but its greatest early glory came in the areas of health enforcement under title VI after the enactment of Medicare. Under OCR criteria established at that time, nondiscrimination had to be practiced in all areas of hospital operation, such as administration, assignments, treatment of patients, granting staff privileges to physicians, operation of training programs and the assignment of all employees. The then Surgeon General first publicly discussed these requirements in August of 1965 in a magazine called Hospitals. Practices of approximately 7,000 recipient hospitals, that is prospective recipients of Medicare funds, were analyzed and reacted to by a force of 750 people in the Department drawn from agencies all over in the strong commitment of the agency to get at historic discrimination in health care.

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[6] Summary, Community Hospital Transfers January 1979 to September 1979, news release issued by L.A. County Supervisor Pete Schabarum, Nov. 18, 1979: Memorandum to Supervisors Peter Schabarum from Robert White, Director, L.A. Department of Health Services, Nov. 16, January 4 and 17, on Private Hospital Referrals to County Facilities.

[7] Steve Wiman, Managing Attorney, Channel Counties Legal Services Association, Oxnard, CA March, 1979, as cited in Dallek, *op. cit.*, p. 53. See also Roemer and Mera "Patient Dumping and Other Voluntary Agency Contributions to Public Agency Problems", *Medical Care*, 1973.

[8] *ID.*

By those efforts, the Department effectively desegregated approximately 1,000 hospitals through the promise of new Federal funds. Further, when funds were clearly not forthcoming to hospitals out of compliance, delinquent recipients realized that HEW's title VI staff were intent upon making good on their threats.

Nothing rivaling this comprehensive assault on title VI violations in the health area has taken place since that time. This inaction has stemmed from a governmental preoccupation with educational issues and its inadequate understanding on the part of the Government, the courts and the public of discrimination in the health care sector once the white and colored signs came down.

Discrimination continues to exist in health care in very simple and very complex forms. Right here in Riverside County, CA, when two cars collided on a freeway, one car filled with white teenagers and one car filled with black teenagers, we found discrimination in treatment based on the race of the occupants. All of the youngsters were taken to a local hospital. The white youngsters were asked for the names of their private physicians, their private physicians were called, and they were transferred to the hospitals where those private physicians agreed to meet the youngsters. The black youngsters were all put back in the ambulance and sent to the community hospital without any effort to identify physicians that they might have or facilities that they might like to be transferred to. The assumption was simply made that they did not have doctors, that they did not have a private hospital they wished to go to, and that is repeated in every sector of the country.

In Phoenix, AZ, a small Spanish-speaking child was taken in for treatment after a German shepherd dog attacked her. No one in the facility spoke Spanish, and her father was not allowed in the treatment room. When the short treatment of the child was over and the child was taken home, her father discovered that the child's clothing had not been removed and bites under the clothing had not been attended to. The wounds that were visible and treated later became infected due to inadequate cleansing before the stitches were put in.

Similarly, a Mexican-American woman in Colorado reported to us that she was treated by a physician in an emergency room in Denver, and then heard him say to a colleague how much he hated treating those dirty Mexicans because they all stink.

A month ago in San Francisco, a black man was taken by ambulance to three hospitals seeking treatment for an ice pick wound to the head. He died at the third hospital.

These are some of the simpler manifestations of racism going on every day in every region of the country. Hospitals continue to close inner city facilities and relocate in white surburban areas when the patient mix downtown becomes too heavily minority. Nursing homes continue to separate patients by race by racial steering between facilities, and by refusal to take Medicaid patients. Hospital clinics separate patients by method payment, resulting in white and black clinics. Hospitals set up room and wing assignments based on method of payment, resulting in segregated wings. Black physicians are still filing complaints of denial of staff privileges on the basis of race—not only in the South, but right here in sunny California. Hospitals more and more refuse to take Medicaid patients, with a resulting closure of access to minority residents.

These and similar complaints were all filed with OCR, and we never believed we lacked authority to investigate and resolve these problems based on where Federal funds were received in the facility or how they were dispensed by the controlling agency. I support the passage of H.R. 700 because it will restore title VI to its former status, which has been substantially undercut by the reasoning of the Grove City decision.

During my tenure in the office, we received and acted upon complaints of discrimination by the Massachusetts Rate Setting Commission, the Wyoming Department of Health and Social Services, the South Dakota Department of Social Services, the St. Louis, Missouri Department of Health and Hospitals, and on and on. I have given you a list of the bodies that we received and acted on complaints against.

Under title VI authority, when a State or local government agency or department received Federal funds, our point of view was the entire agency or department was covered. The Civil Rights Restoration Act reiterates this standard, as I understand it, consistent with prior Title VI coverage.

When I was at OCR, it was our position that when a hospital, a nursing home, a health maintenance organization or other corporate health entity received Federal funds, the entire entity was covered. For example, a hospital decision to close certain services in the inner city and transfer them to a predominantly white surburban area was subject to title VI prohibitions regardless of the method of payment of the surburban versus inner city patients. It was our expectation in situations where a complaint was filed against a chain of health facilities—for example, a nursing home failing to adequately equip their facilities for access to the hearing impaired—that an order compelling accommodation would be implemented system-wide.

The Civil Rights Restoration Act of 1985 reestablishes this standard which is consistent with prior title VI covereage. The problems that we face today are a mix of unattended and continuing historical discriminations. But while these patterns and practices have been continuing, resulting in inadequate access to care, the health care costs have been rising at phenomenal rates. Hospital costs have increased 979 percent in the last 20 years, and physician fees have increased 700 percent. In a state of alarm, Federal and State legislators are seeking multiple cutbacks and innovations to contain health care costs. Beneficiaries must pay more and more for their services, fewer and fewer are determined to be eligible, and they must pay more and more out-of-pocket for what they get. Many of those most in need don't even have these programs to fall back on. Twenty-seven percent of the United States population, or fifty-point-seven million people, are uninsured for all or part of the year.

A 1984 Gallup poll found that 25 percent of the public, including 51 percent of blacks and 69 percent of Hispanics, reported problems in having enough money to pay for their medical care.

While these entitlement programs as one answer to health care cost containment, new financing systems are being created to contain costs among providers. Thus, under Medicare, we no longer reimburse providers respectively, but rather on the basis of 468 diagnostically related groupings—hospitals receiving a preset amount for each Medicare patient they treat, based on patient's DRG, regardless of the actual costs incurred from providing care.

DRG's may ultimately be effective in controlling costs because they give providers an incentive to streamline their diagnoses and to shorten the periods of treatment, but abuses of several sorts are being documented. Multiple re-admissions of the same patient have allowed multiple payments for the same DRG. According to newspaper accounts, dumping of Medicare patients through premature discharges has resulted in death, stroke and permanent disability. We have also heard report of hospital administrators pressuring OB-GYN's to do more Caesarian sections because the DRG for that procedure is more profitable than the DRG for normal delivery.

DRG's are now used in Medicaid reimbursements, as well as Medicare reimbursements, in Pennsylvania, Vermont, and Ohio, and will shortly be used in Minnesota, Michigan and Washington. North Carolina and Indiana are also considering using them. Thus, low-income people and the elderly are the two major segments of our society who receive their health care under this new DRG basis. Because of the new DRG system, many hospitals will be denying care to patients who have unprofitable diagnoses. They will be reducing needed hospital care and they will be prematurely discharging patients. The effect of these practices will be felt most keenly among minorities and the poor because of their disproportionate poverty and dependency on public financing of health care. Title VI must remain a viable statutory remedy to address these practices systemically where the effect disproportionately harms protected people.

Another dramatic change in health care financing has been greater flexibility given by Congress to the States in determining Medicaid reimbursement rates for hospitals. In doing this, they thought that the States might be able to contain the costs at the State level under their Medicaid programs. They ordered the States while doing this, however, to take into account rates for those hospitals and facilities serving disproportionate numbers of the poor. The vast majority of States have done nothing to implement setting of rates so as to protect the solvency of those hospitals providing disproportionate amounts of service to the poor. Under title VI, the failure of State agencies to take action on this issue may receive necessary administrative and judicial attention. H.R. 700 returns the statute to its previous strength in addressing this issue.

A third and final example of changes in health care financing is in the PPO area. I want to share with you an example. In the State of Maryland, there is a Blue Cross panel that has been set up. They attempted to set up a panel of providers that works something like an HMO. Hospitals and physicians agree to provide services to PPO members at a discount. The ones who are participants are called panel providers. Insurance companies like Blue Cross often negotiate with hospitals and physicians to obtain the least costly panel. Panel members provide services from their own buildings on a fee-for-service basis. People who are members of the PPO can go outside the panel to get care, but they won't enjoy the discounts, such as increased benefits or eliminated cost sharing. Providers thus get a semiguarantee pool of patients in return for the discounts.

This configuration may sound progressive in a cost containment sense, but it may mean the deathknell for many inner city hospitals serving minorities and the poor. The Blue Cross panel that I mentioned set up a panel of hospitals that were low-cost providers. They did not and would not include any of the inner city hospitals, any of the teaching hospitals, with the result that the patients were drawn to the suburban facilities, the low-cost providers, taking the desperately needed private patients away from the inner city hospitals and further exacerbating the gap between high-pay and low-pay patients, because the fewer patients you get going into the inner city, the higher they have to raise their charges in order to meet the service of the patients that they do meet. There is a also a resulting racial pattern in where patients are going to for service.

This action in Maryland has been challenged by the teaching hospitals and the inner city hospitals, and they have gone against the State Insurance Commissioner who approved this panel. It would be appropriate for people excluded from services as a result of this pattern to file a claim against the State Insurance Commissioner on title VI grounds. Again, a restored and revitalized title VI statute as is before you would allow that appropriate type of action.

Finally, I believe you had called to your attention in another context the very alarming rate of transfer of hospitals from the nonprofit sector into the for-profit sector, which is going to have a tremendous impact on access for poor people and minorities. From 1980 through 1984, 87 southern hospitals, many of them public, sold to for-profit concerns. Between 1981 and 1983, 46 public hospitals in the South were sold to proprietary interests. Others were turned over to these chains for management. By 1990, it is estimated that 90 percent of acute care hospitals will be owned by proprietary care entities.

Five chains now control two-thirds of the proprietary market—Health Corporation of America, Humana, American Medical Enterprises, National Medical Enterprises, and NU-MED. Our experience with the chains thus far makes us believe that for-profit hospitals mean less care for the needy, the elderly, higher costs for everyone, and decisions based on what is profitable as opposed to what is needed.

As Gordon Bonnyman of Nashville, Tennessee Legal Services stated concerning HCA in Nashville, "The poor just don't get into HCA hospitals in my city. They run efficient trains because they uncouple the second class cars." Few, if any, Medicaid patients are accepted, and the uninsured are automatically turned away. Services are spun off under different subsidiaries, creating a very significant need to reach discriminatry patterns through the corporate office.

The pace and complexity of change in the health industry today is dizzying for providers and consumers alike. The underlying message is coming through quite clearly, however, in minority communities. Neither the Government nor the private sector can afford to extend us health care access. They will discard our poor and sick with the same abandon that has allowed a whole population of homeless people to remain faceless and voiceless to the community at large.

The legislation before you is one vitally important step in maintaining a policy of concern for those most in need among us and preventing erosion of one of the few effective legal tools to remedy unlawful discrimination in health care.

Thank you.

Mr. **JEFFORDS**. Thank you very much, Ms. Ivie.

[The prepared statement of Sylvia Drew Ivie follows:]

PREPARED STATEMENT OF SYLVIA DREW IVIE, DIRECTOR, NATIONAL HEALTH LAW PROGRAM

My name is Sylvia Drew Ivie. I am the director of the National Health Law Program, a Legal Services support center which has for the past sixteen years represented minorities and the poor in their efforts to secure access to comprehensive quality health services. During the Carter administration, I took a leave of absence from the Natioinal Health Law Program to serve as Director of the Office for Civil Rights in the Department of Health and Human Services.

In both of these capacities, I have sought to enforce Title VI protections in the health arena. The Federal Office for Civil Rights came into existence in May 1967 under HEW Secretary John Gardner. While that office has been identified primarily by its great desegregation struggles, the Gardner administration's first significant Title VI victory came in the area of health. The Medicare Program was established in 1965, and hospitals and health care facilities not in compliance with OCR regulations were barred from receiving funds under Title VI. Under OCR criteria, nondiscrimination had to be practiced in all areas of hospital operations such as administration, assignments, treatment of patients, granting staff privileges to physicians, operation of training programs, and the assignment of all employees. The then Surgeon General first publicly discussed these requirements in the August 1965 issue of Hospitals. Practices of approximately 7,000 recipient hospitals were analyzed and reacted to by a force of 750 people borrowed from agencies throughout HEW.

The Department effectively desegregated approximately 1,000 hospitals through the promise of new federal funds. Further, when funds were clearly not forthcoming to hospitals out of compliance, delinquent recipients realized that HEW's Title VI staff were intent upon making good on their threats.

Nothing rivaling this comprehensive assault on Title VI violations in the health area has taken place since that time. This inaction has stemmed from a governmental preoccupation with educational issues and an inadequate understanding on the part of the government, the courts, and the public of discrimination in the health care sector once 'white' and 'colored' signs came down.

Discrimination countinues to exist in health care in very simple and very complex forms. Right here in Riverside County, California, when two cars collided on a freeway, one containing all black teenage passengers, the other containing all white teenage passengers, differential treatments were provided on the basis of race. For each white youngster, an effort was made to find his personal physician, and arrangements were made to have the patient met at the next facility. All of the black youngsters were transferred immediately, no questions asked, to the nearest public hospital.

In nearby Phoenix, Arizona, a small Spanish-speaking child was taken in for treatment after a German Shepherd attacked her. No one in the facility spoke Spanish, and her father was not allowed in the treatment room. When the short treatment was over and the daughter taken home, the father discovered that the child's clothes had not been removed and bites under the clothing had not been attended to. The wounds that were visible and treated later become infected due to inadequate cleansing before the stitches were put in.

A Mexican-American woman in Colorado reported to us that she was treated by a physician in an emergency room and then heard him say to a colleague how much he hated "those dirty Mexicans" because "they all stink."

A month ago in San Francisco, a black man was taken by ambulance to three hospitals seeking treatment for an ice pick wound to the head. He died at the third hospital.

These are some of the simpler manifestations of racism going on every day in every region of the country. Hospitals continue to close inner city facilities and relocate in white suburban areas when the patient mix downtown becomes too heavily minority. Nursing homes continue to separate patients by race by racial steering between facilities and by refusal to take Medicaid patients. Hospital clinics separate patients by method of payment-resulting in white and black clinics. Hospitals set up room and wing assignments based on method of payment, resulting in segregated wings. Black physicians are still filing complaints of denial of staff privileges on the basis of race—not only in the South but also right here in sunny California. Hospitals more and more refuse to take Medicaid patients, with a resulting closure of access to minority residents.

These and similar complaints were all filed with OCR, and we never believed we lacked authority to investigate and resolve these problems based on where federal funds were received in the facility or how they were dispensed by the controlling agency. I support the passage of HR 700 because it will restore Title VI to its former status which has been substantially undercut by the reasoning of the *Grove City* decision in the United States Supreme Court.

During my tenure in the Office of Civil Rights, we received and acted upon complaints, of discrimination by the Massachusetts Rate Setting Commission, the Wyoming Department of Health and Social Services, the South Dakota Department of Social Services, the St Louis Missouri Department of Health and Hospitals, the Pennsylvania Department of Health, the Texas Department of Human Services, the Maryland Department of Human Services, the Mississippi Health Care Commission, The Georgia Department of Medical Assistance, the State of Missouri Department of Mental Health, and the Ohio Department of Mental Retardation. In many instances, the complaints filed against these state bodies concerning practice by a substate grantee. Under Title VI authority, when a state or local governmental agency or department received federal funds, out point of view was that the entire agency or department was covered. The Civil Rights Restoration Act of 1985 (HR 700), reiterates this importance standard consistent with prior Title VI coverage.

When I was at the Office of Civil Rights, it was our position that when a hospital, nursing home, Health Maintenance Organization or other corporation health entity received federal funds, the entire entity was covered. For example, a hospital decision to close certain services in the inner city and transfer them to a predominantly white suburban area were subject to Title VI prohibition regardless of the method of payment of the suburban vs inner city patients. It was our expectation in situations where a complaint was filed against chain of health facilities (i.e. nursing homes failing to adequaltely equip their facilities for access for the hearing impaired) that an order compelling accommodation would be implemented system wide.

The Civil Rights Restoration Act of 1985 reestablishes this standard which is consistent with prior Title VI coverage. The problems that we face today are a mix of unattended and continuing historical discriminations. But while these patterns and practices have been continuing, resulting in inadequate access to care, the health care costs have been rising at phenomenal rates. Hospital costs have increased 979% in the past 20 years and physician fees have increased 700%. In a state of alarm, federal state legislators are seeking multiple cutbacks and innovations to contain health care costs. The primary reductions have been and continue to be in programs serving the elderly and the poor, that is Medicare and Medicaid. Beneficiaries must pay more and more for their services. Fewer and fewer are determined to be eligible. And they must pay more and more out of pocket for what they get. Many of those most in need don't even have these programs to fall back on. Twenty seven percent of the United States population or 50.7 million people are uninsured for all or part of the year.

A 1984 Gallup poll found that 25% of the public, including 51% of blacks and 69% of Hispanics, reported problems in having enough money to pay for their medical case.

While entitlement programs are being cut as one answer to health care cost containment, new financing systems are being created to contain costs among providers. Thus, under Medicare, we no longer reimburse providers prospectively, but rather on the basis of 468 diagnostically related groupings (DRGs). Hospitals receiving a preset amount for each Medicare patient they treat, based on the patient's DRG, regardless of the actual costs incurred from providing care. DRGs may ultimately be effective in controlling costs because they give providers an incentive to streamline their diagnoses and to shorten the periods of treatment, but abuses of several sorts are being documented. Multiple readmissions of the same patient have allowed multiple payments for the same DRG. According to newspaper accounts, "dumping" of Medicare patients through premature discharges has resulted in death, stroke, and permanent disability. We have also heard reports of hospital administrators pressuring OB-GYNs to do more Caesarian sections because the DRG for that procedure is more profitable than the DRG for normal delivery. DRGs are now used for Medicaid reimbursements (as well as Medicare) in Pennsylvania, Vermont, and Ohio, and will be used shortly in Minnesota, Michigan, and Washington. Their use is presently under consideration in North Carolina and Indiana. Thus, low income people and the elderly are the two major segments of our society who receive their health care on a DRG basis. Because of the new DRG system, many hospitals will be denying care to patients who have unprofitable diagnosis. They will be reducing needed hospital care and they will be prematurely discharged patients. The effect of these practices will be felt most keenly among minorities and the poor because of their disproportionate poverty and dependency on public financing of health care. Title VI must remain a viable statutory remedy to address these practices where the effect disproportionately harms protected groups.

Another example of a change in health care financing designed to contain health care costs was an amendment to the Social Security Act in 1981 allowing states increased flexibility in determining their Medicaid reimbursement rates for hospitals. 42 U.S.C. § 1396a(a)(13)(A). Congress made clear, however, that regardless of the methodology utilized, each state plan had to adjust its reimbursement rates for hospitals that serve the poor. To protect the solvency of those hospitals and access to health care by the poor, the states were required to provide for payment through the use of rates which take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs. Most states have totally ignored this requirement. Under Title VI of the 1964 Civil Rights Act, the failure of the state agency to take action on this issue may receive necessary administrative and judicial attention. H.R. 700 returns the statute to its previous strength in addressing this issue.

Another new financing arrangement encouraged by recent federal and state legislatures is the establishment of preferred provider organizations. PPOs are organizations of hospitals and/or physicians that have agreed to provide services to PPO members at a discount. PPO providers are called "panel providers." Insurance companies often negotiate with hospitals and physicians to obtain the least costly panel. Panel members provide services from their own buildings on a fee-for-service basis. PPO members can seek care outside the panel, but they will not enjoy PPO discounts, such as increased benefits or eliminated cost sharing. Providers thus obtain a semi-guarantee pool of patients in return for the discounts.

This configuration which sounds progressive in a cost containment sense, in fact may mean the deathknell for many inner city hospitals serving minorities and the poor. In Maryland, for example, Blue Cross organized a PPO panel made up exclusively of low cost providers. Inner city and teaching hospitals and other hospitals serving a disproportionate number of low income patients were excluded from the panel as being too "high cost." The excluded hospital claimed that their costs were higher than average because they subsidize large amounts of charity care and bad debt. By the panel's configuration, private pay patients, so desperately needed for the financial stability of inner city hospitals, are redirected away from the inner city facilities. As the inner city facility loses patients, their rates go up higher. As the suburban facilities maximize their PPO patients flow, their costs become even lower. As this cost gap increases, others besides Blue Cross will send their patients to the PPO panel hospitals leaving the inner city and teaching hospitals only with emergency room and specialty care services. A Title VI action against a state insurance commissioner and/or a large insurance corporation could compel inclusion of some inner city or teaching facilities on PPO panels to avoid effective racial-ethnic discrimination.

Finally, I wish to call attention to the building of new conglomerates by for-profit hospital chains such as the Hospital Corporation of America. From 1980 through 1984, 87 southern hospitals, many of them public, were sold to for-profit concerns. Between 1981-1983, 46 public hospitals in the south were sold to proprietary interests. Others were turned over to these chains for management. By 1990, it is estimated that 90% of acute care hospitals will be owned by proprietary care entities.

Five chains now control ⅔ of the proprietary market. (HCA, Humana, AMI, National Medical Enterprises, NU-MEd, Inc.). Our experience with the chains thus far makes us believe that for-profit hospitals mean less care for the needy, the elderly, higher costs for everyone and decisions based on what's profitable to what's not needed. As Gordon Bonnyman stated concerning HCA in Nashville, Tennessee, "The poor just don't get into HCA hospitals in my city. They run efficient trains because they uncouple the second class cars." Few if any Medicaid patients are accepted, and the uninsured are automatically turned away. Services are spun off under different subsidiaries, creating a very significant need to reach discriminatory patterns through the corporate office.

The pace and complexity of change in the health industry today is dizzying for providers and consumers alike. The underlying message is coming through quite clearly, however, in minority communities. Neither the government nor the private sector can afford to extend us health care access. They will discard our poor and sick with the same abandon that has allowed a whole population of homeless people to remain faceless and voiceless to the community at large.

The legislation before you is one vitally important step in maintaining a policy of concern for those most in need among us and preventing erosion of one of the few effective legal tools to remedy unlawful discrimination in health care.

Mr. JEFFORDS. Our next witness is Dr. Robert Gregg, president of the Association of American Physicians and Surgeons, Covina, CA. Dr. Gregg, it is a pleasure to have you with us. Thank you very much for coming and sharing your testimony with us this afternoon.

Dr. GREGG. Thank you very much, Mr. Chairman and members of the committee.

Being a physician in the private practice medicine and not involved very often in affairs such as this, it is somewhat difficult to understand the language of bills and legislation, and so forth.

However, one thing I did find rather interesting as I was attempting to do this was the fact that if I apply the concepts of medical diagnosis, if you will, of a bill, I don't find that I am too much different, other than learning the jargon and what the periods and smaller words and phrases mean. So while I am not really familiar with everything with regard to legislation, I think I can analyze the bill, at least as far as the physician's and patient's perspectives. So I certainly won't take any time to go into the bill per se, except as the major area that pertains to the delivery of health care at the private practice or community level.

I think it is important to understand for all of us, regardless of our interest in this, is that whatever laws are passed and Federal funds—or State funds possibly—go to encourage these discriminatory acts, then the rules and regulations will follow. Those have a great impact.

I am reminded of the Medicaid Program, which started out in a very worthy way with trying to get all the minorities, et cetera, into the mainstream of medical care. But as a number of things happened in the last 20 years—for example, health care inflation, as well as inflation in the rest of the economy, and more and more regulations trying to make this access better and better—we find that the dollar amount allocated to the care of these patients in the mainstream of medical care decreased and decreased.

So what happened in my field, which is obstetrics and gynecology, is that the amount reimbursed for obstetrics on a patient-for-patient basis was less than the overhead in my office. Unfortunately, I don't happen to be believe in cost shifting, so I felt like I couldn't continue to do this and still stay in practice.

But another aspect of this is the psychology of it, and that is many minority patients—probably in many other fields of medicine as well—don't like the inability to be able to pay for the services that they receive. I had a number of patients tell me that even though I might even offer to take care of them until they could better afford to pay for the services, they didn't feel like they could do that because they didn't like that approach to it.

So discrimination is a mixed bag and, I think, as a result of what has happened in the last 20 years relative to the Medicaid Program, we really have what I have been calling a boomerang discriminatory program. So I think that we have to consider the long-term effects of any legislation that goes through. I do believe that equal justice and civil rights for everyone is worthwhile and important and a moral responsibility. I don't think it is a legislative responsibility.

One of the phrases or clarifications in the bill that seemed to bother me the most was under title VI, section 908. The interpretation reads regarding program or activity, "all operations of." That is a rather all-encompassing phrase, and it was kind of overbearing to me. Knowing what some of the proponents of an all-encompassing bill might envision, I could see where this could hit into every walk of life. So I would say that that type of thing has been untested, and we certainly know what can happen.

I can foresee this happening in a pharmacy, for example, where they just go in to buy the prescriptions or buy the medication and the pharmacist himself really may not have any Federal funds otherwise, but because of this relationship in the construction of the pharmacy—the doorways, entranceways, and so forth—could be imposed.

The other aspect of this as it pertains to Medicaid, which is the program that is most closest to me and a number of other physicians, is the fact that we are now seeing because of the escalating health care dollar this same thing happening to the Medicare patients. I think that this would be a tragedy if programs like this continue to grow with less and less money because of increasing rules and regulations and the expenses involved in that. Those patients will then be forced out of the mainstream of medical care. I think this is a very serious thing and should be considered.

I happen to be believe that there are a number of other ways that could be developed to take care of all of the minorities and the needy, et cetera, but I think there are probably a lot more that can take care of their own needs if the dole wasn't there.

I made just a rough estimate in my office, which is a single-purpose office about 3,000 square feet where three of us practice, as to what it might cost to retrofit the office. We have a few handicapped patients who come in in wheelchairs and they are taken through the doorways in the examining rooms. We all help them and they don't seem to complain about this. But if we had to widen the doors and hallways and put in a handicap washroom, our setup is such that we would have to knock down our laboratory and change things around, so that the actual patient care that we render would be jeopardized. So my question is always when things like this come up: Where does the discrimination end?

I think that certain things like this where it has the potential of affecting all our lives, I think parochial interests should be set aside so that the true justice and civil rights that our Founding Fathers outlined in the documents that they originated really prevail. It is hard for me to believe that you can legislate morality and personal beliefs, and so forth. This has to be changed on an educational basis, on a persuasion basis, and most often on small groups and on a one-to-one basis. There is no way in this world that legislation is going to change the morality of personal beliefs of people, even though they should be.

So I think that in closing, I would like to say that these are just some brief remarks relative to what I think H.R. 700 would do to the private practioner and the patient that he takes care of. I actually see a lot of boomerang discrimination which I don't know if any of you see from your vantage point.

Thank you very much.

Mr. JEFFORDS. Thank you very much, Doctor.

[The prepared statement of Dr. Robert H. Gregg follows:]

PREPARED STATEMENT OF ROBERT H. GREGG, M.D., PRESIDENT, ASSOCIATION OF AMERICAN PHYSICIANS AND SURGEONS

Mr. Chairman and members of this committee I truly appreciate the opportunity you have given me to testify. My name is Robert Gregg. I am a practicing Gynecologist, retired Obstetrician, and Associate Clinical Professor of Obstetrics and Gynecology at University of Southern California and Loma Linda Medical Centers. I am currently President of the Association of American Physicians and Surgeons which is a national association that represents and acts as an advocate for patients of all economic levels and the physicians who take care of them on a daily basis.

H.R. 700 states in the preamble: A bill, "to restore the broad scope of coverage and to clarify the application of Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title VI of the Civil Rights Act of 1964.

What prompted the legislation was the U.S. Supreme Court's *Grove City* decision which found that federal aid to students enrolled at Grove City College came under the Title IX of the Education Amendments of 1972 which prohibits sex discrimination in every education program or activity that receives federal financial assistance. The Supreme Court in applying the law said that the coverage applied only to the education program or activity so identified. This decision was not only in consort with the intention of Congress at that time, but substantiated in the lower federal courts subsequently.

Analysis of the four statutes under Titles IX and VI as amended in H.R. 700 reveals the following new changes in common:

1. Each statute is amended by adding:

a. A new section or subsection.

b. The term "program or activity" means all the operations of:

1. A department or agency of a state or local government.

2. The entity of such state or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, etc.

3. A university or a system of higher education.

4. A local educational agency or other school system.

5. A corporation, partnership, or other private organization or

6. Any other entity determined in a manner consistent with the coverage provided with respect to entities . . .

7. "Assistance which supports"

8. Any part of which is extended federal financial assistance

9. Inserting "so found" where appropriate.

As "cited" above, H.R. 700 is quite different than H.R. 5490. We find nothing in H.R. 700 which "restores" pre-*Grove City* civil rights legislation (contrary to the preamble) as stated by its sponsors. In consort with H.R. 700 Congressman Norman Mineta, a co-sponsor, testified on March 7, 1975 in Washington, D.C. before this committee, "enforcement will follow federal dollars where they go." Again in testimony before this committee, William Bradford Reynolds, Assistant Attorney General of the United States, Civil Rights Division, Department of Justice concurred with Congressman Mineta's statement by stating that H.R. 700 follows "the federal dollar to virtually every entity in this country in public and private—with federal supervision, regulation, intervention, instrusion and oversight. Onerous administrative reporting requirements, disruptive agency compliance reviews, and massive bureaucratic paperwork "will follow where ever the federal dollars goes." Physicians, patients and the entire health care industry are all too familiar with these inappropriate, oppressive and costly interferences in the patients well-being for the past twenty years with Medicaid and Medicare. As a result of governments inflationary policies and never ending interference in human rights and professional expertise the Medicaid patients have been forced out of the mainstream of medical care. The latter being the intent of Congress in 1965. I think this committee and the public should know that this is what is going to happen to the Medicare patients if politicians and bureaucrats don't stop interfering in the lives of the American people unless there is a true verifiable need. The Medicaid program is a glaring example of boomerang discrimination which men of good faith and statesmen should recognize.

As far as the "Civil Rights Restoration Act of 1985 is concerned, under Section 504 of the Rehabilitation Act physicians could be forced to retrofit their offices by enlarging doorways, installing ramps, enlarging restrooms, etc. Even though patients and employees would not benefit and even if neither enters the doctors office. In our single purpose office this could not be done without moving walls and eliminating other space important to patient care. The cost would be in the thousands of dollars and I would like to ask "Who would pay for this?" It wouldn't be the government patients. It would be the private paying patients who already underwrite, by cost shifting, many of government programs and have for decades—I submit that this is also discrimination—an encroachment of these citizens civil rights. How long can the tax paying people of America afford to underwrite ill-conceived government programs?

It is not a personal characteristic of mine to be as negative as I have had to be today but it is hard to find much to be positive about as far as government interference in our lives is concerned. Parochial interest should be set aside and true social justice and civil rights should prevail. We cannot undo the injustices of the past nor should we perpetuate them.

I would like to mention some positive programs going on in this country and recommend others:

1. In Madison, Wisconsin and many other cities of America severely handicapped people are working, earning money and paying taxes through the efforts of people like Dr. Lou Brown who has developed a program of integrating these people into schools and jobs. Last year an estimated 22,500 severely handicapped moved into America's mainstream doing real jobs along side nonhandicapped workers. They earned $117 million, saved another $35 million for the taxpayers and paid taxes.

2. Many other programs are being carried on throughout the country—non-governmental programs.

3. Thousands and thousands of physicians and paramedical personnel have volunteered their time and expertise on behalf of the handicapped, minorities of all kinds, the elderly, the unfortunate, and on and on. For thirty-seven years I have taken care of sick minorities at the Los Angeles County Hospital and the Riverside County Hospital. American physicians have given their time without compensation to care for the needy all over the world. Free clinics are manned by health professionals all over this country.

4. Equal economic opportunities should be encouraged by elimination of the minimum wage which would be contrary to the parochial interests of labor and others; no wonder the youth unemployment rate is so high with the drug and crime rate so high; and, secondly, elimination of the dollar amount retirees can earn without subtracting from the monies they get from the government, money which they contributed—both discriminatory. Literally millions of Social Security benefits have to prostitute themselves because of government policies to survive.

5. Through privitization of certain public housing projects (Washington, D.C., Boston, Jersey City, New Orleans and others) important positive developments have taken place. For example, the crime rate is down, employment is up, administrative costs are down, teenage pregnancies are down, vacancies and evictions are down, etc. Many of the countries worst slum areas are in public housing developments.

6. Deregulation of governments part in society and the affairs of man have resulted in fair competition, healthier industries and more productive citizens. For example trucking and airlines.

7. I agree that many blacks have not climbed the educational, economic nor personal self-worth ladder. But this is because they are not being given the opportunity by inappropriate black activist programs, and ill-conceived government programs. Blacks are interested in the same things we all are; jobs, education, safe neighborhoods, etc. Give them a chance.

In summary I would like to say that often the rhetoric and politicking surrounding a bill, any bill, is what sways its passage, not the content nor historical experience nor statesmanlike analysis. As Senator Cranston has said, "The question is whether funds of the government . . . should be used to support discrimination against any class of individuals in our society." Senator Mathias has stated, "if we are going to tighten up our federal spending, it is doubly important to insure that every American has an equal chance to participate in federally assisted programs, and that no American is excluded because of race, gender, age or handicap." Congressman Hawkins has said, "we cannot, nor will not, accept discrimination in any program by institutions that thrive on federal funds."

Of course we all abhor injustice and discrimination. However, it is impossible to legislate and dictate personal beliefs and morality. Indeed the attempt to do so invariably boomerangs. I am unaware of a force program that has succeeded. The more that force is used the more the prejudices are ingrained—That is the nature of human behavior.

We oppose H.R. 700, the Civil Rights Restoration Act of 1985 because its pervasive, expansive and ambiguous content contradicts its stated intention "to restore the prior consistent and longstanding executive branch interpretation and broad institution-wide application of those laws (Title IX, Title VI, Section 504 and the Age Discrimination Act) as previously administered", as well as the intentions, enactment and enforcement of Title IX's enactment some 13 years ago which has consistently been substantiated by federal courts.

CONCLUSION

The civil rights debate and subsequent legislation should be refocused on the time-honored principles of our founding fathers who created the fairest socio-political economic system of all time in their founding documents. Equal opportunty, equal justice and equal civil rights are essential to human progress. We all must have the freedom and opportuntiy to succeed—and yes to fail. No one ever said it was easy to be a human being.

I'm reminded of a statement by a former Congressman from South Carolina.

"My race needs no special defense, for the past history of them in this country (contrary to most other countries) proves them to be the equal of any people any where. All they need is an equal chance in the battle of life."

When are we going to unshackle the black, the female, the youth, the elderly and the handicapped.

Who has the convictions and courage to do what is right not what is expedient?

Mr. **JEFFORDS**. Our next witness is Barbara Waxman from Venice, CA.

Ms. **WAXMAN**. I want to thank the committee for inviting me to testify here. I also want to thank you for scheduling me right after Dr. Gregg.

I am employed by Planned Parenthood/Los Angeles as their disability project coordinator. I am responsible for assuring that all services are accessible to people with visual, hearing, developmental, mobility, psychiatric, and learning disabilities. I have about 10 years of experience as a health educator to the disabled community. The health care that I refer to is sexuality and reproductive health care.

What I will speak to today is partly what happens when section 504 is not enforced, but I will also talk about a few other service delivery systems in the health care field.

First what I would like to do is share a little bit about myself as a disabled person. The family I was brought up in is a bit of a microcosm, or an example of what happens when there are two disabled children, one having the benefits of being able to confront an inacessible environment, and the other who uses a wheelchair—my older brother, who uses a wheelchair and a personal care attendant because he can't take care of his own needs. He had to remain back in special education school.

I was given the benefits of intellectual growth and academic training. My brother was robbed of this. He, at this time, at the age of 33, finds it quite difficult to find a job. You heard testimony this morning regarding employment. He is one of those numbers who finds it difficult to find a job.

His disability had blinded employers to his gifts and talents, as it blinded the educational system to his potential gifts and talents of being a student, and a successful student at that. In his college years, he found it difficult to compete in a competitive academic setting, because the one that he grew up in was not competitive at all, and he never completed his training in college and struggles to this day to focus on what he can do, what his skills are, to support a family—he just got married—and to raise children.

I, myself, reaped the benefits. I completed a 4-year college degree, and I am going on to graduate school this year, as well as being employed for 6½ years consistently by an agency and developing my professional skills.

There is a phenomenon called spread. It is a psychological term in disability psychology literature. What it means is when you look at me, at the brace I am wearing, you just see the brace. With Dr. Gill, you just see her wheelchair and the fact that she might not be able to raise her arms, nor myself being able to raise my arm. You see disability, and that is all you see. That is it. And you don't consider the needs that I might have in my personal life.

So I am disabled. I am not a disabled person, I am part of the disabled who has one medical or health care concern in mind, to be cured. That is a stereotype.

Disability does not cause or prevent cancer, planned or unplanned pregnancy, sexual assault, wife battering, or substance abuse. We require services beyond which the orthopedist, neurologist, and physiatrist can provide to us. When we do seek non-disability-related services, we are confronted by one of two obstacles: one, the disability is seen as the presenting problem. In other words, the health care professional spreads the disability. So these health care providers refer us back to our disability-related health care giver. In 10 years of health education, I have heard innumerable stories of gynecologists, obstetricians, and health care agencies sending a disabled back to her orthopedist or neurologist so she can get a pap smear or have a child delivered.

The other obstacle is that services are not designed with disabled people in mind as a consumer group. I am going to give you a few cases of what happens and how our health and lives are endangered when spread is a result of the discrimination.

A 25-year-old black, deaf woman was rushed to a major Los Angeles hospital emergency room. With no sign language interpreter for this woman, whose only language was American sign language and who does not read English well, the doctors diagnosed and got consent for her treatment for pancreatitis. She returned for emergency care many times in the next 4 years because she did not understand her home health care instructions. Each time she went back to the hospital, she believed the treatment was for stomach cancer. She lived with that belief for 4 years. The only reason this cycle happened to end is because she sought family planning services from our agency which provides a professional fluent in sign language.

The second case. In a well-publicized case, 9-year-old Philip Becker required heart surgery to correct a problem not uncommon to people with Down's syndrome. A 4-year court battle ensued between his birth parents, who abandoned him in a board and care facility years earlier, and his surrogate parents. Philip's birth parents were not opposing surgery on any religious basis, but did so because of his mental retardation. Had Philip not had Down's, providing this care would have been automatic.

Case three. In a recently decided court case in Los Angeles, a nurse convicted of sexually assaulting an adult male, who is totally, physically disabled from multiple sclerosis, was immediately paroled. He had a lenient sentence. The judge declared that his sentencing was based on the victim's questionable testimony. The disabled man could not speak, though he could communicate in ways other than what the court was willing to accept.

It is estimated that disabled persons are sexually assaulted far more frequently than the nondisabled population. Additionally, 75 to 90 percent of disabled boys, girls, men, and women who are assaulted are by people known to them, in relation to 40 to 60 percent of our nondisabled counterparts. Disabled survivors of sexual assault are silent about abuse because they are dependent on those who have hurt them. Before section 504, no accessible crisis intervention services were available. Still there are only a few in the Nation. We need enforcement of the regulations so disabled people can be trained to identify assault, report it, have somewhere to go for treatment, and end the violence in their lives.

Case four. A veteran who had had a stroke years before had recently looked for a treatment center to help him end his years of alcoholism. Not one treatment center would take him. All he could find was a bug-infested hotel room where he began to detoxify himself without medical attention. This is a common case. The disability substance abuse task force conservatively estimates that 500,000 disabled substance abusers live in California only. Only a few treatment programs will accommodate their needs. In other words, if section 504 is enforced, then we might see treatment centers become architecturally accessible.

But my concern also extends to another problem in the treatment program service system, and that is many programs discriminate toward disabled people on the basis of drugs. Many people who have kidney problems are not accepted because of the medications they need. People who have diabetes are not allowed in the programs because they have to bring needles in with them. People with epilepsy are not allowed in because they have to take Dilantin to control their seizures and they are popping pills for that. They are seen as popping pills. Everything is seen as bad medication, bad drugs, rather than good and bad drugs, or use and abuse. That attitude will consistently keep us out of programs.

Last case. A 30-year-old woman with cerebral palsy went to a bay area family planning agency for birth control services. Though she could get her wheelchair through the front door, she could not enter the exam room. As the staff helped her stand in order to get her in the room, she leaned her arm against a wall heater and sustained a severe burn. A complaint was filed with the Office of Civil Rights of California's Department of Health Services. It motivated the family planning agency to move to an accessible site. Once the agency did move to the site, they also made the decision that they would not move any one other site to any accessible building, that if disabled people needed services, they would have to travel long ways in the bay area to receive it from them.

I know mostly about family planning, so I am going to talk a little bit more about that, because there is tremendous abuse. The days are over when disabled people submit to forced sterilization, yet there is still coercion going on. Private medical doctors are rejecting seeing, disabled women, particularly obstetricians. There are stories of a blind woman and her husband who has epilepsy who had an infertility problem, and one private medical physician after another turned them down, saying: "I do not believe that you can raise a child. I will not help you find out what your infertility problem is."

There was disabled woman with muscular dystrophy who wanted to have a child and a gynecologist suggested that she have sterilization because she was going to die in a few years anyway. She was sterilized and she lived 20 years later and raised a child that she adopted from across the border.

These incidents are all too common in the disability community. Fewer private medical doctors in California are accepting Medi-Cal patients, and most disabled people are on Medi-Cal in California. Thus, responsibility of comprehensive health care for disabled people will be on the mainstream, community-based, health care agencies who already serve the lowincome and poor. That is the group that the disabled will belong to.

I understand the Vocational Rehabilitation Act to be a contract between the Government, society, and the disabled community. A breach of that contract has and will put our health and lives in danger. Respect of the intent and enforcement of the law will guarantee us equal opportunity to pursue a qualify of life which we do not yet enjoy. Without compliance and without enforcement, we know that our lives are not important in this society and are, in fact, expendable.

Thank you.

Mr. **JEFFORDS**. Thank you very much.

[The prepared statement of Barbara Faye Waxman follows:]

PREPARED STATEMENT OF BARBARA FAYE WAXMAN

My name is Barbara Faye Waxman. I am a health educator from Venice, California. I have been employed by Planned Parenthood/Los Angeles as their Disability Project Coordinator for six and one half years. My testimony regards my personal experience as well as my professional contact with service discrimination towards consumers with disabilities.

Awareness about prejudice towards myself as a person with a disability, came to me very early. At six years of age, my parents were faced with the choice to keep me in special education school where I would have friends, or to regular public school where I would receive a good education, which they knew I could not have otherwise. The decision was made. I went to regular public school. The same opportunity did not exist for my brother, four years my elder, who remained in special school. I was one who could enjoy privileges of those who are able to confront an inaccessible environment. Yet, he was no less bright than I, and had the potential to compete academically, but was robbed of the chance of early intellectual growth because he used a wheelchair and an attendant to care for his personal needs.

My parent's worst fears came to pass. Public school years were a most psychologically damaging time for me. Twenty-four years ago I could not enjoy the benefits of P.L. 94-142, and the preparation of school administrators, teachers, students for my arrival, as new generations do and will continue to do.

Though there were many, two on-going incidents stay with me in vivid memory. At age eight, my teacher would yell at me during recess. "Run Barbara, run", when she knew I couldn't. I tolerated her insults, her efforts to make my difference more conspicuous than I wanted. Instead of accepting my limits and helping me do the same, she continued to mock and ridicule me with the intent of getting me to run.

In adolescence, when every teenager wants to be inconspicuous, I had a tendency to trip over the carpet and fall everyday in one particular building. And each day, my Math teacher would pass me, staring, not helping or protecting my pride, as I lay there, unmistakable and humiliated.

It was as if there was a conspiracy of silence surrounding me. I had no role models who could teach me a vocabulary to speak about my disability and because no one spoke about it, it was as if I didn't exist. This public silience made it difficult for me to understand myself, and difficult for me not to feel invisible. In those twelve years though they never spoke of it, I believe my disability was the only thing they saw, while forgetting it was a child who possessed it.

The same mind set shows itself in the health care field. Medicine's interest is the prevention and amelioration of disability. For medical professionals curing is a noble act. At the same time the health care needs of disabled women and men, girls and boys, are not sufficiently considered in the mainstream of the health care delivery system. Health care providers allow disability to blind them, to make them indifferent to our real and varied needs, as did my teachers were.

Disability does not cause or prevent cancer, planned or unplanned pregnancy, sexual assult, wife battering, substance abuse, ulcers, or heart attacks. We require services beyond that which the orthopedists, neurologist and psychiatrist can provide. When we do seek non-disability related health care, we are confronted by one of two obstacles: (1) the disability is seen as the presenting problem, so these health providers refer us back to our disability-related health care giver. I know of many times when a woman has been sent back to her orthopedist for a pap smear. (2) services are not designed with disabled people in mind as a consumer group. As long as Section 504 of the Rehabilitation Act of 1973 is n ot enforced, our health and lives continue to be put in danger. The following cases will illustrate my points.

Case 1: A twenty-five old black deaf woman was rushed to a major Los Angeles hospital emergency room. With no sign language interpreter for this woman whose only language is American Sign Language, and who does not read English well, they diagnosed and got consent from her for treatment for pancreatitis. She returned for emergency care many times in the next four years because she did not understand her home-care instructions. Each time she went back to the hospital she believed the treatment was for stomach cancer. The only reason this cycle happened to end is because she sought family planning services from our agency which provides a professional fluent in sign language.

Case 2: In a well-publicized case, nine year old Philip Becker required heart surgery to correct a problem not uncommon to people with Down's Syndrome. A four year battle ensued between his birth parents who abandoned him in a board and care facility years earlier, and his surrogate parents. Philip's birth parents were not opposing surgery on any religious basis but did so because of his mental retardation. Had Philip not had Down's, providing this care, would have been automatic.

Case 3: In a recently decided court case in Los Angeles, nurse convicted of sexually assulting an adult male, who is totally physically disabled from multiple sclerosis, was immediately paroled. The judge declared that his sentencing was based on the victim's questionable testimony. The disabled man could not speak, though he could communicate in ways other than what the court is willing to accept. It is estimated that disabled persons are sexually assulted more frequently than the non-disabled population. Additionally, 75-90% of disabled boys, girls, men and women who are assulted are by people known to them, in relation to 45-60% of our non-disabled counterparts. Disabled survivors of sexual assault are silent about abuse because they are dependent on those who hurt them. Before Section 504, no accessible crisis intervention services were available—still there are only a few in the nation. We need enforcement of the regulations so disabled people can be trained to indentify assault, report it, and end the violence in their lives.

Case 4: A veteran who had had a stroke years before had recently looked for a treatment center to help end his years of alcoholism. Not one would take him. All he could find was a bug-infested hotel room where he began to detoxify himself, without medical attention. The Disability—Substance Abuse Task Forced conservatively estimates that 500,000 disabled substance abusers live in California. Only a few treatment programs will accommodate their needs. That will change as 504 is enforced.

Case 5: A thirty year old woman, with cerebral palsy went to a Bay Area family planning agency for birth control services. Though she could get her wheelchair through the front door, she could not enter the exam room. As the staff helped her stand, in order to get her in, she learned her arm against a wall heater and sustained a severe burn. A complaint was filed with the Office of Civil Rights of California's Department of Health Services. It motivated the family planning agency to move to an accessible site.

But what of the other women and men throughout the country with mental retardation, mobility, hearing and visual impairments in need of health services? Eleven to eighteen percent of women in their childbearing years have disabilities. Since the advent of Section 504, a body of literature has been written regarding the delivery of accessible services. Some agencies use it, most do not. Disabled people are the new high risk group for unplanned pregnancies, and a group more in demand for the support to create families.

Fewer private medical doctors in California are accepting Medi-Cal patients. Thus, responsibility of comprehensive health care for disabled people is be on the mainstreamed, community-based, health care agencies, who already serve the low-income and poor—a group to which disabled people belong.

I understand the Vocational Rehabilitation Act to be a contract between the government, society and the disabled community. A breach of that contract has and will put our health and lives in danger. Respect of the intent, and enforcement of the law will guarantee us equal opportunity to pursue a quality of life which we do not yet enjoy.

Mr. JEFFORDS. Our next witness is Dr. Carol Gill from Van Nuys, CA.

Ms. GILL. Thank you very much for having me here today to address the committee.

I am also grateful that I have an assistant to hold my notes. May I respectfully suggest that, in future such hearings, you have a wheelchair-adjustable rostrum or podium to put notes on. It has been a little inconvenient for me today.

My name is Carol J. Gill. I am a licensed psychologist in the State of California, and I work as the director of rehabilitation psychology at Glendale Adventist Medical Center. I have been physically disabled from age 5 as the result of polio.

I learned about the effects of discrimination on people with disabilities from personal as well as professional experience. I wish to report some of my observations to the committee today.

My first dramatic experiences of discrimination occurred when I reached school age in Chicago, IL. In those days, long before section 504, the only public education available to me was in the "special" school, a totally segregated environment. Ironically, although school officials judged disabled children to be too fragile to attend classes with nondisabled students, I spent a grueling 4 hours per day on a schoolbus to attend one of four elementary schools in Chicago for orthopedically disabled children. I could not attend school with my brothers or neighborhood friends. I remember feeling ashamed and inferior. Frequently, our bus would be attacked by schoolchildren on the street as we paused for traffic lights. My shame deepened as the children outside mocked us and called us cripples. Sometimes they threw objects at us and spat at our windows.

These experiences took their toll on me emotionally and troubled me far more than my physical limitations. Furthermore, I saw my own diminished self-esteem reflected in the behavior of my disabled classmates. In high school, many of my fellow students suffered from what I now recognize clinically as serious depression, yet there were no counseling services other than academic conseling available to us. Many students with high intelligence gave up on the future and progressed to apathetic lives as shutins. Others acted out in self-destructive ways, forming impulsive relationships or turning to drugs and alcohol. One of my closest friends killed herself. Although she sought the help of several psychiatrists, none of them understood or addressed the psychological aspects of her experience as a disabled person.

I did not give up on the future, even though I was counseled not to go to college when I was in the special high school. I did go to college and I got my degree.

I didn't give up, and yet, I did not always find the support that I needed from those I trusted, including my physicians.

When I was 18, I asked my doctor if I was physically capable of conceiving and bearing a child. She refused to discuss my question and told me to forget about it because it was not fair for disabled people to have children. As it turns out, I do have a child now and I was thinking about this as the doctor gave his testimony.

If my child became sick and I needed to fill a prescription at a pharmacy, I certainly hope that I would have the same rights as any parent to get into that pharmacy and get the medication I needed.

A friend of mine who has paralyzed legs remembers frantically searching for a doctor after becoming pregnant. Although her reproductive system was healthy, she was refused treatment by several obstetricians before finding a doctor who had the courage to see her through to an uneventful delivery.

Some times disabled people fail to receive the same treatment for the same condition as nondisabled people because medical providers get distracted by the disability, as Ms. Waxman pointed out.

Frequently, we are perceived as abnormal and asexual because of our disabilities. I once worked with a patient in her fifties whose doctor stopped routinely examining her breasts after she had a stroke. She was discovered to have a sizable lump in her breast when she was hospitalized for rehabilitation 3 years later. Yet, she had just seen her doctor for a complete physical with no findings.

Equally appalling is the case of disabled people who have needs for accommodation that go unmet in medical settings. Recently, a deaf man had a stroke and was hospitalized for rehabilitation. For 2 weeks, he spent much of his time weeping. Since no one at the hospital understood his attempts to communicate with sign language, they guessed at the cause of his depression, labeling it post-stroke emotional lability. Fortunately, a friend who could sign came to visit him and discovered the patient was trying to report that he was being abused by his adult children. Hospital staff intervened and the patient's depression resolved.

Earlier today, and continuing in the afternoon, we have heard quite a bit of discussion about whether or not there should be regulations to protect our civil rights, or whether that question should be left to the moral tendencies or enlightenment of the public sector and service providers. In light of that, I would like to talk to you about the following example, which I think illustrates that our civil rights protections are not superfluous.

About a month ago, I was invited to speak at a hospital grand rounds, where the other speaker was a young physician who presented a videotape of his work with a married woman with cerebral palsy. He described a sense of feeling totally unprepared to "deal with" someone with a disability.

When I viewed this tape, I realized the woman expressed greatest concern about sexuality and her role as a wife. Her complaint, by the way, was very vague abdominal pain that was consistent and always present.

When I questioned the physician about the woman's concerns about her sexuality, he said he had chosen not to address sexuality because he felt it was complicated and it would be better for her not to concern herself with it.

Without seeking the advice of any disability consultant, this man made a unilateral decision about that woman's sexual life. The sad thing is, she had already gone to many doctors who failed to take the time with her that this doctor had. He was her best shot thus far at adequate medical treatment and advice. I am really worried about her.

Later in the presentation, the doctor said that working with a patient with cerebral palsy was like practicing veterinary medicine. At the end of his talk, he received thunderous applause from his fellow physicians.

Thank you.

[The prepared statement of Carol J. Gill follows:]

PREPARED STATEMENT OF DR. CAROL GILL, DIRECTOR OF REHABILITATION PSYCHOLOGY, GLENDALE ADVENTIST MEDICAL CENTER

Dear Chairpersons: My name is Carol J. Gill. I am a licensed psychologist in the state of California and I work as the Director of Rehabilitation Psychology at Glendale Adventist Medical Center. I have been physically disabled from age five as the result of polio.

I learned about the effects of discrimination on people with disabilities from personal as well as professional experience. I wish to report some of my observations to the Committee.

My first dramatic experiences of discrimination occurred when I reached school age in Chicago, Illinois. In those days, the only public education available to me was in the "special" school, a totally segregated environment. Ironically, although school officials judged disabled children to be too fragile to attend classes with non-disabled students, I spent a grueling four hours per day on school bus to attend one of four elementary schools in Chicago for orthopedically disabled children. I could not attend school with my brothers or neighborhood friends. I remember feeling ashamed and inferior. Frequently, our bus would be attacked by school children on the street as we paused for traffic lights. My shame deepened as the children outside mocked us and called us "cripples". Sometimes they threw objects at us and spat on our windows.

These experiences took their toll on me emotionally and troubled me far more than my physical limitations. Furthermore, I saw my own diminished self-esteem reflected in the demeanor and behavior of my disabled classmates. In high school, many of my fellow students suffered from what I now recognize as serious depression, yet there were no counseling services other than academic counseling available to us. Many students with high intelligence gave up on the future and progressed to apathetic lives as shut-ins. Others acted out in self-destructive ways, forming impulsive relationships or turning to drugs and alcohol. One of my closest friends killed herself. Although she sought the help of several psychiatrists, none of them understood or addressed the psychological aspects of her experience as a disabled person.

I did not give up on the future. Yet I did not always find the support I needed from those I trusted, including my physicians. When I was eighteen, I asked my doctor if I was physically capable of conceiving and bearing a child. She refused to discuss my question and told me to forget about it because it was not fair for disabled people to have children. A friend of mine who has paralyzed legs remembers frantically searching for a doctor after becoming pregnant. Although her reproductive system was healthy, she was refused treatment by several obstetricians before finding a doctor who had the courage to see her through to an uneventful delivery.

Sometimes disabled people fail to receive the same treatment for the same condition as non-disabled people because medical providers are distracted by the disability. Frequently, we are perceived as abnormal and asexual. I once worked with a patient in her fifties whose doctor stopped routinely examining her breasts after she had a stroke. She was discovered to have a sizable lump in her breast when she was hospitalized for rehabilitation three years later, yet she had just seen her doctor for a complete physical with no findings.

Equally appalling is the case of disabled people who have needs for accommodation that go unmet in medical settings. Recently, a deaf man had a stroke and was hospitalized for rehabilitation. For two weeks, he spent much of his time weeping. Since no one at the hospital understood his attempts to communicate with sign language, they guessed at the cause of his depression, labeling it post-stroke emotional liability. Fortunately, a friend who could sign came to visit him and discovered the patient was trying to report that he was being abused by his adult children. Hospital staff intervened and the patient's depression resolved.

I think it is all too easy to presume that the kind of prejudice I experienced while growing up is behind us now in 1985 and that perhaps civil rights laws are superfluous. That would be a serious error. About a month ago I was invited to speak at a hospital grand rounds where the other speaker was a young physician who presented a video tape of his work with a married woman with cerebral palsy. He described a sense of feeling totally unprepared to "deal with" someone who was disabled. When I viewed the tape, I realized the woman expressed greatest concerns about sexuality and her role as a wife. When I questioned the physician about this he said he had chosen not to address sexuality because he felt it was complicated and it would be better for her not to concern herself with it. Without seeking the advice of any disability consultants, this man made a unilateral decision about that women's sexual life. The sad thing is, she had already gone to many doctors who failed to take the time with her that this doctor had. He was her best shot thus far at adequate medical treatment. I am worried about her. Later in the presentation, the doctor said that working with a patient with cerebral palsy was like practicing veterinary medicine. At the end of his talk, he received thunderous applause from his fellow physicians.

Mr. **Jeffords**. Thank you very much, Ms. Gill, for excellent testimony and moving testimony.

First of all, a little piece of good news that you ought to be aware of, on March 19, maybe the day before, the Agency of Health and Human Services announced that with respect to hospitals that had in the past received Hill-Burton funds, that now they have an option of rather than paying back the Hill-Burton funds, they can—that provision would be waived if they set that money aside in trust for the use of treating indigent persons, free care for them. So we hope that would give some assistance in the area that you were discussing.

I do have some concerns, and Ms. Bustillos, it is whether or not we are talking about State or Federal problems when it runs into the licensing of hospitals and determining as to whether or not they should be private or public and as to whether or not the Federal Government should be the one that is determining that aspect or whether they should be required to service indigent patients and whether that is a State matter.

I wonder if you would comment on that.

Ms. **Bustillos.** I am not sure I quite understand your point. You want to know whether it is a Federal question or a State question——

Mr. **Jeffords.** We are talking here about——

Ms. **Bustillos** [continuing]. —on services——

Mr. **Jeffords** [continuing]. Discrimination. In other words, let me give you the facts of the situation. The situation is that the private hospital does not discriminate based on race or creed or sex at all, but says we will just not accept patients unless they have evidence of being financially responsible and able to pay their bill.

That does not seem to come within the purview of the Civil Rights Act at this time, certainly, and you feel that that—are you suggesting that it ought to be or is this not a State matter as to—for licensing hospitals on the provision they provide care, or at least emergency care to indigents?

Ms. **Bustillos.** I understand your point now.

I guess my position is that if a hospital is under Hill-Burton to provide a certain percent of care to those who cannot afford to pay, then that should be provided in a nondiscriminatory manner.

Mr. **Jeffords.** OK, I understand——

Ms. **Bustillos.** That was the comment—right, that was how my comments were directed.

As to the larger question——

Mr. **Jeffords.** OK. Go ahead.

Ms. **Bustillos.** To be quite frank, I didn't really come here today kind of prepared to address that larger question as to whose ultimate responsibility it is to provide for the indigent. Based on my research and work in this area, it is definitely a problem of crucial importance and I think, given the trend, will continue to be a problem of crucial importance.

Unfortunately, I really can't give you a better answer because I would really have to think it through a little more to really give you a well-thought-out answer since we are talking about quite a lot of money that would be involved in providing adequate care to the indigent. Here in Los Angeles County, we have gone back and forth with the Board of Supervisors over this very issue.

I would be more than willing to supplement and provide a further paper on that issue, but at this point, I am not really prepared to fully address it.

Mr. **Jeffords.** I appreciate that. I don't say that I will burden you with that request, but it is a very difficult question which Congress is going to have to deal with. If my memory serves me correct—and I am getting ancient, but as I remember, we used to require the towns and the States to take of indigent persons. That was true for lawyers as well as doctors. We had our own charitable caseload that each lawyer was expected to take.

Then, as we moved on in late 1960's, early 1970's, the Federal Government entered in and I think our health care bill from the Federal Government perspective is close to—total health care—it has got to be close to $100 billion now and in the Medicaid and Medicare areas, it is $80 or $90 billion, which we had picked up, which previously taken by either the private providers or the States and localities.

So I just wonder whether the Federal Government—if it is appropriate for them to assume the total burden here or—rather, especially with all our deficit problems or not—it is a very difficult question for us to——

Ms. BUSTILLOS. I would agree. I think the bottom line is that there has to be some care for the indigent and if one agency is not picking up that tab, then another must. Whether it is totally upon the Federal Government or whether it should be shared between Federal Government and State, those are complicated issues that I think it is incumbent upon Congress to address. But I think the bottom line is that there must be some adequate care for the indigent.

Mr. JEFFORDS. Thank you.

Mr. Hayes.

Mr. HAYES. I just want to say that we have been benefitted by the testimony which has been excellent from these witnesses and the others who preceded them.

I have a couple of questions. I want to raise one with Ms. Ivie. I don't know whether I am being presumptuous or not, but I want to know—the tenor of your statement seems to indicate that you share my feelings, to some extent, and that is that if we haven't already decided, some of us in this society of ours—to have the authority to determine what happens to others—if we haven't already decided who the expendables are in this society, we are in the process of doing it.

Do you share that opinion, unless we turn the thing around?

Ms. IVIE. Yes, I do.

Mr. HAYES. OK, all right.

Now, the other question I will raise of you, Dr. Gregg, you asked a question when you were dealing with the problem of the possibility of having to remodel your office in order to accommodate the handicapped—you asked, "Where does discrimination end."

Could I ask you where you think it begins?

Dr. GREGG. I think it is a personal view.

Mr. HAYES. A personal view?

Dr. GREGG. Of each individual in society in this world. I don't think you can legislate me or anyone else to nondiscriminate, if that is the path I choose. I don't happen to choose that path, but it never has worked historically and I don't think it will work in the future.

Mr. HAYES. Do you have—no, I shouldn't ask this question, but God knows—do you have any patients, women and minorities or anything like that?

Dr. GREGG. I certainly do. I am a gynecologist. I have worked at the Los Angeles County Hospital, Riverside County Hospital for 37 years. I have taken care of minorities of all colors, races, creeds, religions all of my professional life. I will continue to do so, regardless of the legislation that you do or do not pass.

Mr. HAYES. You didn't see the Civil Rights Act as being necessary?

Dr. GREGG. I haven't studied that. I think something that is worthwhile saying if I may, that the indigent people of America may indeed get higher quality of medical care than those out in the community in private practice. I think in the medical centers, where probably over 70 percent of medical care for the indigent takes place, you have specialty departments, residents and interns in training. I think the indigent get a high quality of medical care and I have often said that if I was in an automobile accident or seriously injured, I would want to go to Los Angeles County Hospital because I have trained there, I know what they do—I know the facilities could be improved, as we all know, of course, but I am not talking about the amenities now. I am talking about the quality of the care that is given for whatever they go there to get. I have long maintained this because I have lived it.

I think it is something that you all ought to seriously understand and consider.

Mr. **Hayes**. But you don't think H.R. 700 is necessary?

Dr. **Gregg**. No, no, I don't. It is too all-invasive.

Mr. **Hayes**. No further questions.

Mr. **Jeffords**. Thank you.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Thank you very much, Mr. Chairman.

I think I can use a personal example in reiterating Dr. Gregg's point. Last May 23, my house caught on fire and I had to jump out the second-floor window in order to save my life. I ended up suffering severe smoke inhalation and also a fractured vertebrate. The community hospital to which I was brought by the rescue squad completely misdiagnosed the extent of my lung damage and also didn't quite know what to do with my fractured vertebrate situation. It was only after I was transferred to the Bethesda Naval Medical Center where I received the kind of treatment necessary to keep me alive.

It is not that the community hospital was inadequate; it was simply due to the fact that they didn't have the proper diagnostic tools to find out exactly what injuries I had sustained.

Now, having said that, I want to get back to H.R. 700 and ask one question of each of the three witnesses. First, to Ms. Bustillos.

I don't claim to be an expert in health financing legislation and the Federal Government's role in that because the Judiciary Committee doesn't have jurisdiction over that and when you are dealing with the House of Representatives, you are dealing with a house full of specialists, but it is my understanding that the requirement of the Hill-Burton Act to treat without charge indigent people runs out either when the hospital pays back the Hill-Burton funds that were used for its construction or 20 years later, whichever comes first.

Is it your intention in your testimony to have H.R. 700 extend the coverage of the Civil Rights Act to pick up and cover those situations where the Hill-Burton coverage runs out?

Ms. **Bustillos**. No, it is not. I feel that it is my intention to have title VI restored to its pre-*Grove City* state.

As to the larger question, again, as to whether that might be appropriate in a separate bill or a separate consideration by Congress, that would be something worth, I think, giving more thought to. But, as for my intention for H.R. 700, no.

Mr. **Sensenbrenner**. OK. Do you think that title VI, as it was interpreted by administrative agencies before the *Grove City* decision came down does impose a requirement that hospitals do accept indigent patients?

Ms. **Bustillos**. That is a hard question to answer because of the decision in *Guardians* where there is an effect test that is now in place in determining whether discrimination, in fact, occurred at institutions. I guess my answer would be yes and no; yes to the extent that you could prove there was discrimination against a certain group, and no to the extent you couldn't.

Mr. **Sensenbrenner**. Thank you.

Ms. Waxman, one very quick question. Do you believe that section 504 should apply in the *Baby Dole* situation wherein a retarded infant is allowed to starve to death? That is a case of both age and handicap discrimination.

Ms. **Waxman**. I believe that the regulations are there to help guide the health care field, to provide services to any disabled person in need of those health care services.

Mr. **Sensenbrenner**. Changing the law relative to giving protection to those kinds of infants was an extremely controversial action that Congress took a couple of years ago in response to the situation that occurred in an Indiana hospital. I am wondering what your own personal opinion is, whether section 504 should apply to an obviously disabled infant from the moment of birth on?

Ms. **Waxman**. Like I said, if there is a disabled person in need of services, medical health care services, they should not be denied on the basis of their disability.

Mr. **Sensenbrenner**. I thank you.

Finally, to Ms. Ivie, it seems to me that, listening to your testimony, you want to have an effects test applied in cases of discrimination. It is my understanding that the U.S. Supreme Court said the proper test in these cases was an intent case, rather than an effects test, and do you know of any case in the pre-*Grove City* law where an effects test was mandated?

Ms. **Ivie**. Well, the Supreme Court has, in the last 2 months, upheld an effects test in the 504 area.

Mr. **Sensenbrenner**. Talking about title VI, because the last pronouncement on title VI was that it was an intent test, rather than an effects test.

Ms. **Ivie**. As I understand the law, pre-*Grove City*, a title VI effects test has not been invalidated by the U.S. Supreme Court. It is still viable and we still rely upon that.

Mr. **Sensenbrenner**. Thank you.

Mr. **Jeffords**. Any other questions?

I want to thank this panel and all of the witnesses who appeared this afternoon. I express the regrets of Chairman Hawkins, who had to go to another meeting, and I want to personally on the record thank him for asking me and the others to attend here in Los Angeles and his staff for all the invaluable help they have given us in enjoying our stay and I am hopeful that the testimony we have today and that we have been getting as we move around the country, that we will be able to come out with a bill which will move swiftly and which will get us back to where we were prior to the *Grove City* decision.

I thank you so much for coming, and with that, I declare the hearing hereby closed.

[Whereupon, at 3:50 p.m., the committees were adjourned, to reconvene subject to the call of the Chair.]

CIVIL RIGHTS RESTORATION ACT OF 1985

MONDAY, MARCH 25, 1985

House of Representatives, Committee on Education and Labor, and Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary,
Washington, DC.

The committees met, pursuant to call, at 9:30 a.m., in the Santa Fe City Hall Council Chambers, 200 Lincoln Avenue, Santa Fe, NM, Hon. Don Edwards presiding.

Members present: Representatives Edwards, Richardson, Hayes, and Sensenbrenner.

Staff present: Ivy L. Davis, and Phil Kiko, counsel, Subcommittee on Civil and Constitutional Rights; Edmund Cooke, counsel, Committee on Education and Labor and Dr. Beth Buehlmann, minority staff director for education.

Mr. **Edwards**. The committee will come to order.

Today marks the conclusion of joint regional hearings conducted by the Committee on Education and Labor and the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee. These regional hearings began on March 4, in Philadelphia, and since then we have traveled to Atlanta, Chicago, Los Angeles, and now Santa Fe.

I know I am speaking for all the members of the subcommittees here on Education and Labor and of the Judiciary in stating that we are enjoying immensely the hospitality of this beautiful city. For many of us it is our first trip here, and we indeed are enjoying our stay.

The committees are considering legislation which is designed to restore four civil rights statutes to their previous vitality and effectiveness. Together, these laws prohibit discrimination on the basis of race, color, national origin, sex, handicap, and age, in federally funded programs.

Corrective action is necessary because of a recent Supreme Court decision which have narrowed the scope of coverage of these laws. If Congress fails to act, we will have the anomalous situation which will permit an institution to engage in discriminatory practices in some of or most of its operations, despite the fact that it is receiving Federal financial assistance.

House Resolution 700, the Civil Rights Restoration Act of 1985, assures that when Federal assistance goes to any part of an institution, all of the operations of that institution will be conducted in a nondiscriminatory manner. Even the Assistant Attorney General for Civil Rights, William Bradford Reynolds, made it clear in testimony before our committee that if Congress fails to act, future court decisions will reach the same narrow conclusion for each of these statutes and in areas beyond education, such as discrimination claims in health care, housing and employment, just to name a few.

We have heard very compelling testimony from a broad cross section of witnesses on the need for this resolution, and I think that H.R. 700 adequately addresses these concerns.

The two committees plan to bring the bill up for full committee consideration in April, and to the full House of Representatives in May of this year, and, of course, we look forward to the support of all American groups.

Sitting here today with me is the chairman of the Judiciary Subcommittee. We are honored to have from the Education and Labor Committee the gentleman from Illinois, Mr. Charles Hayes.

Mr. Hayes, we welcome you. Do you have a statement?

Mr. HAYES. Just a brief statement. I am certainly echoing your position as to the beauty of the setting of this hearing. But I must say that, being one of the newer Members of Congress, I am getting a lot out of the number of hearings that we have been having throughout the country on what the needs of the various parties are for the restoration for the Civil Rights Act as it relates to *Grove City,* which is a U.S. Supreme Court decision.

I am somewhat distressed, I have to admit. I don't think anyone needs to think that the passage of H.R. 700 is going to be automatic. Even though I understood the chairman to indicate that we will be ready in May, I am somewhat bothered and somewhat frightened at the direction in which we seem to be going on the total issue of civil rights. I am bothered by it as it relates to affirmative action, as it relates to the handicapped, as it relates to the Navajo Reservation programs.

These are the kinds of things that distress me, and I would suggest that the people here in this beautiful part of our Nation need to do everything they can to make sure that the people who have to vote on H.R. 700, the Members of Congress, understand its importance to you and to our democracy as a whole.

I am just thankful to be part of these hearings; but please understand that this is an uphill fight, and we need all the help and support we can get from people out in the field. Thank you very much.

Mr. EDWARDS. Thank you very much, Mr. Hayes.

We are also pleased to have with us the ranking minority member of the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, the most able and distinguished Member from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. I, too, would like to express my appreciation to the people of Santa Fe for the hospitality which they have extended to us. I wish I didn't have to get back to vote on the MX missile tomorrow, so that I could spend a little bit more time enjoying this very beautiful and very picturesque part of the country, which I have never visited before.

H.R. 700 is an important bill. It is a controversial bill, as well. And the reason for the controversy is not due to any concern that the U.S. Supreme Court was right in the decision in *Grove City College* v. *Bell,* which was handed down in February 1984.

Everybody agrees that the Supreme Court misinterpreted it and misconstrued the intent of Congress in narrowly construing title IX of the Education Amendments Act of 1972 and that some type of remedial legislation is necessary to undo the damage that the Supreme Court has done.

The controversy, however, revolves around whether H.R. 700 goes beyond the Supreme Court decision and actually does more than restore the law to what everybody thought it would be prior to February 20, 1984, the date of the decision in the *Grove City College* case.

There are three major concerns that have been expressed throughout these hearings by those who have read the bill and analyzed it. First, there is a significant difference in coverage between the private sector and the public sector under the bill. The private sector is far more broadly covered, in that independent contractors, franchisees, as well as corporations in their entirety are covered if they accept Federal funds. However, in the case of State and local governments and local school districts, only that department or agency of the State and local government is covered.

So, for example, if the police department receives Federal funds in a city, but the health department doesn't, then the police department is covered under the four civil rights statutes, but the health department is not.

On the other hand, in the private sector, if one Hardware Hank franchisee gets Federal funds, then all of the other Hardware Hank franchisees around the country, even though they are independently incorporated and receive no Federal funds, are brought in under the coverage of this bill.

So the question has to be asked why this bill has got extremely narrow coverage in the public sector and extremely broad coverage in the private sector.

Second, the change in the pinpointing language made by this bill is a bit of concern. What the bill does, it strikes out the words, "progam, or part thereof, in which," and inserts in lieu thereof, "assistance which supports"; and the latter phrase can be interpreted far more broadly than the former phrase, and there has to be an explanation of why this amendment is necessary.

And certainly there have been some expressions of concern by witnesses that we might actually work against the advancement of women and minorities in the educational sector by including students who receive guaranteed student loans as bringing their universities under the coverage of these four statutes.

We have some testimony from representatives of private colleges and universities that do not receive Federal aid and, if they are brought under these statutes as a result of accepting students on guaranteed student loans, they will simply refuse to accept those students.

And since minority students need guaranteed student loans more than students who are in the majority, we might very well end up denying educational opportunities to minority students simply because a college or university elects not to be brought under the coverage of this statute.

These are all very technical issues, but they are issues that have to be answered, and they have to be answered, lest this bill suffer the same fate as a companion bill in the 1984 session of Congress, which passed the House by an overwhelming margin, and was filibustered to death and eventually tabled by the U.S. Senate.

I want to see a law passed to undo the damage that the Supreme Court has done. But I am afraid that, unless these questions are answered, H.R. 700 will meet the same fate as the 1984 version.

So, I thank you, gentlemen, for my lengthy opening statement, and I look forward to the witnesses answering these questions.

Mr. EDWARDS. Thank you, Mr. Sensenbrenner. Santa Fe is well represented in the House of Representatives by your local Congressman, Bill Richardson, who in a relatively short period of time has become one of the most influential and popular Members of the House of Representatives.

Congressman Richardson is a member of the Energy and Commerce Committee, a terribly important committee in this high-technology age. He is also a member of the House Interior Committee and a hard working and influential member of two subcommittees, Water and Public Power Resources and Public Lands, both subcommittess crucial to the Southwest. He is also a member of the Select Committee on Aging.

I was interested this morning in the front page of the local paper, to see that Congressman Richardson received the highest marks of any Southwest Member of Congress in environmental and conservation issues. This was from a voting record produced by the League of Conservation Voters. Congressman Richardson is certainly to be congratulated on this splendid record.

The subcommittee welcomes you, Bill, and you are recognized. We are delighted to have you with us today.

Mr. RICHARDSON. Thank you very much, Mr. Chairman. I would like to apologize for the cold I have and for the fact that, as you mentioned earlier, the vote on the MX. Before coming to the hearing, I received a leadership summons to leave for Washington some time soon. Regrettably, I can't extend my entire hospitality to you and the subcommittee of my district because of this call that I have received pending the vote tomorrow.

Nonetheless, Mr. Chairman, I wish to thank you and your committee for coming to Santa Fe to discuss this extremely important issue. I personally want to thank Mr. Charles Hayes, a fellow freshman from Chicago. Charles and I have worked very closely together on many civil rights issues, he as a Member of the Congressional Black Caucus, and I, as a member of the Congressional Hispanic Caucus.

In addition, I wish to welcome Mr. Sensenbrenner, who I consider to be one of the most articulate members of the minority when it comes to many issues, especially integration and some of the issues that we are discussing today.

But also, Mr. Chairman, I wish to welcome you to Santa Fe. I think that someday when civil rights legislation is recorded, in terms of who has done the most—and we know many in the civil rights movement, recognized giants such as Martin Luther King and others--that history will be very kind to you. Through your efforts, there has been much legislation that deals with the handicapped and with civil rights. And not just the Restoration Act, but with the Civil Rights Commission, with the entirety of the scope of legislation with which this Congress has introduced over the last 20 years.

I only wish I had more time, and you had more time to see Santa Fe, northern New Mexico, and this district, where I think a bill like this affects perhaps the most people, due to the ethnic diversity of the community. Today, you will hear witnesses that are Hispanic. You will hear witnesses that are native American. This district has the largest native American population anywhere in the country, 42 percent Hispanic, 40 percent Anglo.

This is a bill that affects all Americans, not just minorities. It deals with discrimination in Federal assistance. It is an important piece of legislation that we have to rethink.

It is clear, in my judgment, and in the judgment of many, Mr. Chairman, that this administration has regressed in the area of civil rights. I saw today the latest attack on the affirmative action issue. I think it is continued, I think it is systematic. I commend you for moving rapidly on this bill, because it is an important bill that simply recaptures some of the gains that we have made in the past.

I believe it is time for the Federal Government to again take the lead and set an example in eradicating discrimination in this country. The Congress must take corrective action before further damage is done to those individuals who for so long were not provided equal access to opportunities. I firmly believe that the American public wants to work individually and collectively to remove all vestiges of discrimination in our society.

To accomplish this task, we need a strong legal code with enforcement capability.

Once again, Mr. Chairman, I welcome you to Santa Fe. I hope that you move expeditiously, on this bill. I hope the Senate moves rapidly, also. I am pleased that you have chosen, along with Chicago and with Los Angeles and many other parts of the country, this area in the Southwest. These areas experience discrimination on a daily basis. We hope, with the passage of this legislation, that we can improve the civil rights record of the administration on a systematic basis.

So Mr. Chairman, Mr. Sensenbrenner, Mr. Hayes, and members of your staff that have been very kind in dealing with us, we wish you the very best on your stay in Santa Fe, and I look forward to this hearing.

Mr. EDWARDS. Thank you very much, Mr. Richardson, for that very courteous welcome. We appreciate it very much.

As a matter of fact, this subcommittee which has handled the voting rights legislation also, is extremely grateful to the experts from this great State for testimony in the past, when we first enacted the Voting Rights Act and the two extensions. The testimony from this area was very helpful.

Well, this morning our first witness, which will constitute a panel—and I understand that they are going to use the mike at the back of the room, not the one in the front. So if you have a problem, channel 7, with that.

The members of the panel are Alice Hoppes, who is a State board member of the NAACP from Albuquerque, NM; also, Carnis Salisbury, representing the National Council of Negro Women, also from Albuquerque; Susan Loubet, respresenting the National Women's Political Caucus in Albuquerque; and Ralph Markward. Mr. Markward is president of the Paralyzed Veterans of America, Zia Chapter.

Mr. David Montoya is a member of the panel, representing the State Human Rights Commission in Santa Fe. The last member of the panel will be Prof. Paul Nathanson, who is a professor at the school of law of your fine University of New Mexico.

The first member of the panel to testify is Alice Hoppes, who is a State board member of the NAACP.

Ms. Hoppes.

STATEMENT OF ALICE HOPPES, STATE BOARD MEMBER, NAACP; CARNIS SALISBURY, NATIONAL COUNCIL OF NEGRO WOMEN; SUSAN LOUBET, PRESIDENT, NATIONAL WOMEN'S POLITICAL CAUCUS OF NEW MEXICO; RALPH MARKWARD, PRESIDENT, ZIA CHAPTER, PARALYZED VETERANS OF AMERICA; DAVID MONTOYA, NEW MEXICO STATE HUMAN RIGHTS COMMISSION; AND PAUL NATHANSON, SCHOOL OF LAW, UNIVERSITY OF NEW MEXICO

Ms. HOPPES. To the members of this committee, I am Alice F. Hoppes, State board member of the National Association for the Advancement of Colored People, asking your support for H.R. 700 to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504, of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1974.

America is a long way from racial equality from our failure to eliminate the legacy of racial discrimination. We must not infer that nothing has changed. The status of people of color is not at all as it was in the last century or as as it was in 1954. There has been many critical changes over the last 30 years, both favorable and unfavorable.

The changing status of minorities over the last 30 years is recorded by a social accounting system that is not always up to the reality it attempts to portray. This can be summarized by three sets of observations.

The first is that over the last 30 years since 1954, minorities have made demonstrable gains in many of the most important aspects of life, income, educational attainment, health, housing, job status, and electoral politics. Progress was more pronounced in the first two-thirds of the period than in the last. It is agreed that these gains were the combined result of the adoption of antidiscrimination laws and a natural commitment to their enforcement.

Sustained national growth, which made room for new entrants into the labor market, coupled with the great society's targeted programs to correct the legacies of past discrimination. A network of individuals and institutions attentive to resolving friction between groups and helping those who need help to cope with our system.

The second observation is that during the same 30 years, the paths of different segments of the black population took different terms. Blacks in two-parent families and with adequate schooling maintained a steady rate of progress up until the late 1970's. Blacks from one-parent households and with inadequate schooling underwent a sharp descent that has not come to an end.

The third is that since the 1970's and even more so since 1980, progress came to a halt for most segments of the black population. It is generally agreed that the reason for the reversal was steep economic recession, cutbacks in social programs, and a slackening in the commitment to the enforcement of civil rights.

The Nation seems to be undergoing a shift of attitude, in part because of an overloaded budget and endless deficits and, in part, because we have begun to lose sight of our history as a nation. Nowhere is the retreat more noticeable than in the enforcement of civil rights.

In the 1960's and 1970's a series of civil rights laws were enacted. America had begun to expand the first component of pluralistic governance, equality among groups. Agencies were established to monitor and remedy discrimination practices in areas of employment, housing, education, federally funded programs and activities, and voting rights. In some quarters, affirmative action is viewed as unfair preference for protected classes of persons who may be its beneficiaries, women, minorities, and the disabled.

The current discord over affirmative action is disturbing. The need to balance one prized value against another is what a democratic governance is all about. At its roots, the message is simple. "Do unto others as you would have them do unto to you." The Golden Rule is not only a guide to daily personal behavior, but a commitment to the survival of this Nation. Thank you.

[The prepared statement of Alice Hoppes follows:]

PREPARED STATEMENT OF ALICE F. HOPPES, NAACP

I am Alice F. Hoppes state board member of the National Association for the Advancement of Colored People, asking your support for H.R. 700 to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title VI of the Civil Rights Act of 1974.

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The changing status of minorities over the last thirty years, is recorded by a social accounting system that is not always up to the reality it attempts to portray. This can be summarized by three sets of observation.

The first is that over the last thirty years since 1954 minorities have made demonstrable gains in many of the most important aspects of life: Income, educational attainment, health, housing, job status and electoral politics. Progress was more pronounced in the first two-thirds of the period than in the last. It is agreed that these gains were the combined result of the adoption of anti-discrimination laws, and a natural commitment to their enforcement.

Sustained national growth, which made room for new entrants into the labor market. Coupled with the Great Society's targeted programs to correct the legacies of past discrimination.

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The third is that since the 1970's and even more so since 1980, progress came to a halt for most segments of the Black population. It is generally agreed that the reason for the reversal was steep economic recession, cut-backs in social programs and a slackening in the commitment to the enforcement of civil rights.

The Nation seems to be undergoing a shift of attitude; in part, because of an overloaded budget and endless deficits; and, in part, because we have begun to lose sight of our history as a nation. Nowhere is the retreat more noticeable than in the enforcement of Civil Rights.

In the 1960's and 1970's a series of civil rights laws were enacted. America had begun to expand the first component of pluralistic governance-equality among groups.

Agencies were established to monitor and remedy discrimination practices in areas of employment, housing, education, federally funded programs and activities and voting rights. In some quarters, affirmative action is viewed as unfair preference for protected classes of persons who may be its beneficiaries: Women, minorities, and the disabled.

The current discord over Affirmative Action is disturbing, the need to balance one prized value against another is what a democratic governance is all about.

At it roots the message is simple: Do unto others as you would have them do unto you. The golden rule is not only a guide to daily personal behavior, but a key to the survival of this nation.

Mr. EDWARDS. Thank you very much, Ms. Hoppes.

The committees are honored and pleased to announce that we have with us today the Governor of this great State, Hon. Toney Anaya, who has a splendid record in human rights and civil rights and is certainly known throughout the United States and especially in Washington, DC, as one of the most outstanding State chief executives.

Governor Anaya, we welcome you.

Mr. RICHARDSON. Mr. Chairman, I think the Governor is going to be in here in a second. I believe he is being interviewed by one of the TV stations.

Mr. EDWARDS. I will have to say this thing all over again. Here he is.

STATEMENT OF TONEY ANAYA, GOVERNOR OF NEW MEXICO

Governor, did you hear what I said?

Governor ANAYA. Thank you very much. Let me thank you for coming to New Mexico and welcome you to our State. We very much appreciate you bringing your subcommittee here, and we appreciate very much Congressman Richardson's leadership in convincing you to come to New Mexico.

Mr. EDWARDS. We do what Congressman Richardson tells us to do.

Governor ANAYA. I have been told that that is the way it happens. The White House doesn't always, but it does most of the time. We appreciate again your being here. The weather is nothing unusual. We have this 365 days a year.

I will try to be brief in my statement, Mr. Chairman, and I will try to respond to any particular questions that the committee may have.

I think it is very appropriate that you have brought this hearing to New Mexico. New Mexico is a land—we used to advertise it as the Land of Three Cultures, making sort of a tourist attraction out of our ethnic diversity here. And by three cultures, we mean the American Indian, the Spanish, and the Anglo, the three successive migrations of people into this region over the centuries.

Now we are a milticultured society, with influxes of blacks, Asians, and other minorities. New Mexico's population, according to the 1980 census, is composed of little over 36 percent Hispanics, a little over 8 percent Indian, although I think that is probably low. And other minorities make up 2.5 to 3 percent. Over one-half of the population in our State are women.

There is a romantic notion that our varied cultures in New Mexico have lived in harmony in recent decades. But I think anyone who has studied New Mexico history knows differently. Even the most recent history shows that American Indians, Hispanics and women have been excluded from the fruits of New Mexico's economy, as have blacks and other minorities. The most mundane statistics on income, education levels, housing and other important indicators will prove me right on that point.

Progress has been made, of course. Just the fact that a man by the name of Anaya sits in the Governor's office today is proof that change has come, but change has come slowly, reluctantly, and only with steady efforts. Those who are comfortable with the status quo have a disturbing tendence to balk at change, to backlash, if you will, and to retard the movement toward real change.

The history of the Federal civil rights enactment, beginning with the Civil Rights Act of 1964, is a proud example to this Nation and to the international community. Our country must reaffirm its commitment to civil rights when, as now, world and national attention is focused on those nations which restrict the civil rights of their citizens. We in New Mexico are advocates of equality and practitioners of these important precepts.

The Civil Rights Restoration Act of 1985 has my strong, personal support. This legislation will correct the restrictive interpretation given by the U.S. Supreme Court to title IX of the Education Amendments in the *Grove City* case and will return the law to its original congressional intent.

Twenty years of case law, of contemporaneously enacted regulatory schemes and of legislative history are replete with examples of Congress' intent in this area. This bill's only purpose is to reaffirm that legislative intent.

An institution benefiting from public financing has no right to exempt itself from the dictates of public policy. Nevertheless, the U.S. Supreme Court ruled in *Grove City* that student's receipt of Federal financial aid is Federal financial assistance only to the financial aid program of that institution and not to the institution as a whole.

As a result, only that one program within the institution is prohibited from practicing discrimination, in spite of the benefits which the entire institution receives from the Federal funds. Notwithstanding the U.S. Supreme Court decision, no Federal resource should promote or support discriminatory practices, no matter how slightly, no matter how indirectly.

Those who do not practice discrimination have nothing to fear from this proposed legislation, but those who do discriminate have no right to benefit from the public financial largesse.

Even here in New Mexico, where we pride ourselves in living ostensibly in harmony, one culture with another, results are not what we would like to see. And even though I am told our institutions of higher learning are in compliance with Federal civil rights laws and regulations, let me quote you briefly some statistics from a study that I ordered to determine the progress or lack thereof in affirmative action programs in our State's institutions or higher learning.

I will be happy to make these charts available for the committee, if they should so choose. I won't go through each of our institutions of higher learning, but let me just turn to two or three by way of reference.

The University of New Mexico, our largest university in the State, has a student ethnicity breakdown of some 23 percent Hispanic, 69 percent white or Anglo, with the other percentages scattered throughout.

Yet when one looks at the employment level, we find that 90 percent of all those employees earning $30,000 or more are white. Only 6.8 percent are Hispanic. Native Americans don't even register. Blacks are less than one-half of 1 percent. And if you look at the male-female ratio, nearly 90 percent of those making $30,000 or over are male, and approximately 10 percent are female.

If you look at the managerial, executive ranks, if you look at the full-time faculty, you will find the very same kind of scenario, almost 91 percent white or Anglo, some 6 percent Hispanic, less than a quarter of 1 percent black. The males are almost 85 percent, with females roughly 15 percent. That is in our largest institution.

Every one of our institutions has the same poor record when it comes to permitting minorities and women to participate.

New Mexico State University, for example, is our second largest institution, with some 25 percent Hispanic population in student enrollment. Yet again, when one sees the breakdown, they are even more out of kilter when it comes to the full-time faculty. You have some 92 percent that are male, with some 8 percent that are female in the full-time faculty.

And when you look at those making over $30,000 you have almost 95 percent of those earning $30,000 or over at New Mexico State are male, with some 5 percent being female. The minorities don't even register hardly at all on this particular chart.

And if you go to our other institutions, there is very little change from that. There is one different, one of our institutions here in the north, Highlands University, where they do have a larger percentage of Hispanics in full-time positions. But even there, it is not reflective of what the student population should reflect.

So if you are looking for evidence of racial discrimination in our state, unfortunately you will find it. If you are looking for evidence of sexual discrimination, you will certainly find that too; discrimination against the handicapped and the aged, that, as well. I won't try to quantify any more than I have here, but if this subcommittee desires additional data, we will be happy to try to provide it through my staff.

I would also comment that about a year ago a Federal judge ordered the New Mexico Legislature to restructure certain legislative districts that had been gerrymandered in order to divide the minority voting strength. This is what the judge had to say about one New Mexico town, and I am not singling out that one town. There were quite a few others that were referred to in that order. But here is what the judge said about one of the towns.

> The evidence revealed a long-standing pattern of discrimination in Clovis that has become a way of life. It is deeply engrained and all pervasive, permeating every institution and social and economic structure of the community. Discriminatory hiring, unequal pay and the absence of training opportunities are pervasive in Clovis.

Again, I don't mean to single out this one town. Seventeen districts were ordered to redraw boundaries and hold special elections, and the judge used some pretty strong language in referring to those other districts, as well.

I believe that Congress is free to attach reasonable and unambiguous conditions to the receipt of Federal financial assistance. To attach the requirement that Federal financial assistance not directly or indirectly support discrimination is essential to ensure the success and effectiveness of the antidiscrimination acts, that Federal funds shall not be used to support illegal discrimination.

Section 504 of the Rehabilitation Act, title VI of the Civil Rights Act of 1964, and the Age Discrimination Act of 1975, each have the identical program or activity language so narrowly interpreted by the Supreme Court.

Without the clarification as proposed by the Civil Rights Restoration Act of 1985, Federal resources could be used to support or promote discrimination against the handicapped, against the elderly, against persons of color or against other protected minorities.

Significant progress has been made during the last two decades to ensure equality of opportunity and of participation in many aspects of our society for those individuals who historically have not enjoyed those benefits.

We, however, have by no means reached the point where self-satisfaction or complacency should be allowed to go unnoticed or uncorrected. And to the extent there is alleged progress, I question how much of it is real and how much is rhetoric.

We must remain vigilant to attempts to erode the civil rights which our people struggled so hard to achieve. These amendments are absolutely necessary to continue the progress which has been made and to reach the goals which have not yet been attained.

The Civil Rights Restoration Act of 1985 is an important step toward full equality of all people.

Every time this country has opened its doors to new groups of people, we all have benefited, and our country has become a little bit stronger because of it. In the 18th century, only white male landowners voted.

Then the door was successfully opened to include black males and both black and white females, American Indians and Hispanics. Everytime, our Nation became a better place to live as a result of those changes. Everytime, the rest of the world took note of this great change. Everytime, we all became stronger.

This is a precious legacy that we have in this country. It would be a shame if the last 15 years of this century proved an exception to this rule.

In some of these comments I have made in referring to our State, Mr. Chairman, I don't want to leave the subcommittee with the vision of New Mexico or the thought of New Mexico that we are not concerned or that we haven't made progress. I think we have made more progress probably than most any other State in the country, and certainly this administration has been very committed to trying to root out discrimination wherever it exists, and we will continue with those efforts.

But I am personally very concerned with what I see, not only in terms of obstacles as we continue our struggles at the local and State levels, but what I see of legislation such as that that you are proposing, if it is not enacted, the obstacles that we will encounter at the Federal level, obstacles that would probably make it nearly impossible for us to ensure full opportunity some day in this country for all Americans, regardless of race, color, ethnic background, age, gender, or whatever other criteria.

Again, I thank you for taking a very important step in trying to seek enactment of this legislation. We wish you well in establishing a record that will make it possible to convince the rest of Congress to go along.

We will be working along with Congressman Richardson and the rest of our congressional delegation, who we understand when this was first acted upon were not all necessarily on board, but we will try to do everything we can to convince them of the necessity to ensure that this legislation is enacted.

I thank you for coming to our State, and I will be happy to try to respond to any questions you may have.

[The prepared statement of Governor Anaya follows:]

PREPARED STATEMENT OF TONEY ANAYA, GOVERNOR, STATE OF NEW MEXICO

I want to welcome Congressmen Don Edwards [D-Calif], Mervyn Dymally [D-Calif.], F. James Sensenbrenner [R-Wisc.], and Charles A. Hayes [D-Ill.] to New Mexico, and thank Bill Richardson for inviting the subcommittee on Civil and Constitutional Rights to Santa Fe.

We used to advertise New Mexico as the land of three cultures—making a sort of tourist attraction out of our ethnic diversity here. By three cultures, we meant the American Indian, the Spanish, and the Anglo—the three successive migrations of people into this region over the centuries. Now we are a multi-cultured society with influxes of Blacks, Asians and other minorities.

New Mexico's population is composed of 36.2 percent Hispanics, 8.1 percent Indian, and other minorities make up 2.5 percent. Over one half of our population are women.

There's a romantic notion that our varied cultures in New Mexico have lived in harmony in recent decades, but anyone who has studied New Mexico history knows differently. Even the most recent history shows that American Indians and Hispanics have been excluded from the fruits of New Mexico's economy. The most mundane statistics on income, education levels, housing and other important indicators will prove me right on that point.

Progress has been made, of course. Just the fact that a man named Anaya sits in the governor's office here is proof that change has come. But change comes slowly, reluctantly and only with steady efforts. Those who are comfortable with the status quo have a disturbing tendency to balk at change—to "backlash," if you will—and retard the movements toward real change.

The history of the federal civil rights enactments, beginning with the Civil Rights Act of 1964, is a proud example to this nation and to the international community. Our country must reaffirm its commitment to civil rights when, as now, world and national attention is focused on those nations which restrict the civil rights of their citizens. We in New Mexico are advocates of equality and practioners of these important precipts.

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Those who do not practice discrimination have nothing to fear from this proposed legislation—but those who do discriminate have no right to benefit from the public financial largesse.

Even here in New Mexico where we pride ourselves in living ostensibly in harmony—one culture with another—results are not what we would like to see. And, even though I'm told our institutions of higher learning are in compliance with federal civil rights laws and regulations, let me quote you some statistics from a study I ordered to determine the progress or lack thereof in affirmative action programs in our state's institutions of higher learning. [quote from study]

So, if you're looking for evidence of racial discrimination in New Mexico, you'll find it. If you're looking for evidence of sexual discrimination, you'll find that, too. Discrimination against the handicapped or the aged? That too.

I won't try to quantify it or cite any particular set of statistics, but if that's what you're seeking, my staff can provide it.

About a year ago, a federal judge ordered the New Mexico Legislature to restructure certain legislative districts that had been gerrymandered in order to divide minority voting strength. This is what the judge had to say about one New Mexico town:

"The evidence reveals a long-standing pattern of discrimination in Clovis that has become a way of life. It is deeply ingrained and all pervasive, permeating every institution and social and economic structure of the community. Discriminatory hiring, unequal pay and the absence of training opportunities are pervasive in Clovis."

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We must remain vigilant to attempts to erode the civil rights which our people have struggled so hard to achieve. These amendments are absolutely necessary to continue the progress which has been made and to reach the goals which have not yet been attained. The Civil Rights Restoration Act of 1985 is an important step toward full equality of all people.

Every time this country has opened its doors to new groups of people, we all have benefited, and our country has become a little bit stronger because of it. In the Eighteenth Century, only white male landowners voted. Then only white males.

Then the door was opened to include black males, then both black and white females, American Indians, Hispanics . . . Every time, the rest of the world took note of this great change. Every time, we all became stronger.

This is a precious legacy we have in this country. It would be a shame if the last 15 years of this century proved an exception to this rule. Good luck with your hearings today.

Mr. **Edwards**. Thank you very much, Governor. I think I can speak for all of us. That certainly is the best statement we have received, scholarly and indepth, and certainly it is an inspiration to all of us, and we are proud to make it a part of the permanent record.

I have no questions.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. I have a question.

Governor, as you probably are aware, the coverage of this bill in the public sector, specifically State and local government, is considerably narrower in the coverage of this bill than the public sector.

At the Los Angeles hearing of this committee on Friday, Congressman Jeffords, who is a cosponsor of the bill, said that that was to stop the Governors' lobby and that the Governors would not be on board if they had broad and expansive coverage.

First let me ask you, do you support having narrower coverage apply to State and local governments? And second, if this is to stop the Governors' lobby and you don't support that, what will you do to change their position?

Governor **Anaya**. Mr. Chairman, Congressmen, I do support a much stronger application, and I don't see why State government should be excluded from the same broad coverage that anyone else would be included under.

I am not aware of this being stopped by the Governors' Association or by the Governors of this country.

But if it was intended to be such, I would be the first to attempt to try to ensure that the National Governors Association goes on record as supporting the broader application.

I'm very happy to be involved in the National Governors Association, as well as the Western Governors Association, and I would be happy to start with our Western Governors Conference that meets in June to try to get some resolutions passed to ensure that we, as Governors, go on record as supporting this stronger, more encompassing provision.

Thank you.

Mr. **Edwards**. I think I should point out that the drafters of this bill have no intention of broadening the law from any situation where it was before the *Grove City* decision. In other words, we are not changing the law as it was interpreted by Congress and the courts before what we deem the unfortunate *Grove City* decision.

Mr. Hayes.

Mr. **Hayes**. I want to thank the Governor for what, to me, has been a very comprehensive description of the situation as it exists here in New Mexico in the area of civil rights. And he made clear his support for the legislation which we are seeking to pass, H.R. 700.

I did want to comment that the graphic showing of the situation that exists at a couple of the larger universities in the State of New Mexico as it relates to the composition of people who occupy the administrative positions above the $30,000 level—I think that's the figure you used—that this kind of situation is not unique.

It may vary in terms of percentages in other States, but it is not unique to New Mexico. We do have a problem in a number of other states.

It is very tragic to me that, as we moved as a result of pressures and legislative action in the sixties and early seventies to rectify this inequity in many respects, we find ourselves caught up in a position now where it appears that we are going backwards from what we have gained if we aren't very careful.

As we move to try to end the practice of discrimination, now we are faced with charges of reverse discrimination on the white majority in many instances, and this position is being supported by the administration, as you might have noticed here recently.

This discourages me, and I do hope that people like you can become more active in trying to fight to protect that which we won through actions during the days of Martin Luther King and other times since that time.

Mr. EDWARDS. Thank you, Mr. Hayes.

Mr. Richardson.

Mr. RICHARDSON. Thank you very much, Mr. Chairman.

I too, wish to welcome the Governor, who just returned from a very well earned vacation. He had the New Mexico Legislature here for the last 60 days, and I know he enjoyed his rest. Suffice it to say that the Governor——

Governor ANAYA. Can I interrupt the Congressman, Mr. Chairman?

I left from one Disneyland and went to another.

Mr. RICHARDSON. Mr. Chairman, suffice it to say that the Governor is one of the acknowledged leaders in the country in the area of civil rights, but he couldn't do it without the support of some of his very able staff, who I would like to recognize very briefly.

I notice that Judy Branashen deals with the handicapped, is here; Lillian Roybal deals with many important women's issues. Pete Jiminez is the Governor's personal adviser on civil rights issues and is also president of the GI Forum. Joe Ortiz, the president of Image for New Mexico, is also here; and Councillor Patrick Larragoite, is very active on these issues at the local level.

I won't touch on some of the witnesses who are going to be testifying.

I also would like to recognize, Mr. Chairman, the mayor of Santa Fe, Louie Montano, who is the host, providing us with a facility for this hearing.

Last, but not least, in our multicultured State, I notice that Charley Morrisey, from the NAACP, is here and I wish to just acknowledge that for the record, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Mr. Richardson.

And again, Governor, we really appreciate your coming here today. You have added a lot to our deliberations. We do understand that the Governor has papers piled high on his desk and he must return to the capitol.

Governor ANAYA. Gentlemen, again, I do want to thank you. And again, by way of striving for our State, despite some of the statistics I laid out a while ago, we are making progress in many areas.

Board of regents appointments, which I have made many, we now have blacks on boards of regents for the first time. We now have native Americans on boards of regents for the first time.

We are broadening our coverage in terms of women and Hispanics on boards of regents, cabinets, boards, and commissions. We are attempting to let everyone play a major role.

Our appointments to policymaking positions in State government are all reflective of that kind of philosophy. We want to make New Mexico the model State for others to follow, and perhaps we can provide a little bit of guidance as you continue with other important legislation in Washington.

Again, thank you very much.

Mr. **Edwards**. We will be in recess for about 1 minute.

Mr. **Richardson**. Mr. Chairman, I believe the mayor of Santa Fe, Louie Montano, would like to make a very brief proclamation, welcoming you to the city.

Mr. **Edwards**. Thank you, mayor.

We are delighted to have you here. The mayor is recognized.

STATEMENT OF LOUIE MONTANO

Mr. **Montano**. Thank you for the recognition, Mr. Chairman.

I just want to say that we appreciate your coming to Santa Fe on your very important work. I might point out that this is our 375th anniversary. Santa Fe has led the great battle in recognizing the importance of all our people in giving equal opportunity to everybody.

There is a slogan in Santa Fe that says, "We are what we do." And that is what I am telling you now, that whether you are Hispanic or whatever you are, the important thing is that we recognize you for what you do, rather than where you came form.

So, again, let me thank you for your tremendous efforts in civil rights. As a token of our high esteem for your work, we wish to present to all of you a miniature DeVargas, because he, too, was a great figther. Mr. Chairman, this is a symbol of our State, and on behalf of our holy city, we encourage you to continue.

Mr. **Edwards**. Thank you. I appreciate very much having the mayor and Governor, and, of course, the Congressman appear before us today.

Now this kind of support is really very, very important to us. As Mr. Sensenbrenner pointed out, this bill is not a shoo-in.

Perhaps we will have success in the House rather quickly, but the Senate is going to be a real battle. So we are going to need all your help out there.

We apologize to the members of the panel for this interruption, but I am sure you appreciate what happened as much as we do.

The next member of the panel to testify is Carnis Salisbury, representing the National Council of Negro Women, from Albuquerque.

STATEMENT OF CARNIS SALISBURY, NATIONAL COUNCIL OF NEGRO WOMEN; SUSAN LOUBET, PRESIDENT, NATIONAL WOMEN'S POLITICAL CAUCUS OF NEW MEXICO; RALPH MARKWARD, PRESIDENT, ZIA CHAPTER, PARALYZED VETERANS OF AMERICA; DAVID MONTOYA, NEW MEXICO STATE HUMAN RIGHTS COMMISSION; AND PAUL NATHANSON, SCHOOL OF LAW, UNIVERSITY OF NEW MEXICO

Ms. **Salisbury**. Mr. Chairman, members of the committee, Congressman Richardson, and friends, this is an outstanding privilege for me to be able to speak before a committee concerned about the granted civil rights of a large number of our society at a time when these rights are being threatened.

I represent a group of women who were organized by one of the great civil rights movement movers, Mrs. Mary McLeod Bethune, who organized the National Council of Negro Women.

I had the opportunity to know Mrs. Bethune and to catch some of the fire of her spirit of concern for people who were denied rights that were freely granted to other members of our society.

As a way of introduction, I would like to tell you some of my experiences and why I am particularly interested in this earing. I went to school in a small Texas town, where I walked with my sisters and brothers. We walked about 4 miles to get to school, while others were able to get on the bus, and we looked at these children all along the way. So busing is nothing new to me. This is something that has been with us for a long, long time.

Again, my experience makes me to Austin, TX, where the University of Texas was willing to offer me tuition to go to New York University. They were willing to help. The only thing demanded of me was that I not try to go to the University of Texas, where I lived and where it was convenient for me.

I worked and lived in Marshall, TX, the home of James Farmer and Bill Moyers. I would like to compare, if I had the opportunity at some time, my notes of what I remember about Marshall, TX, with what Bill Moyers remembers. Yet, I would like to tell you that I am a fan of Bill Moyers and I admire him very much.

I remember Marshall for the banks there. When they were ready to send me my deposit, an employee took time to research and go through the statements so they could mark off 'Mr." or "Mrs." and then send out the depositor's statement. Yet, it is very significant to me that out of Marshall, TX, came a Bill Moyers and a James Farmer.

In 1961, when I came to New Mexico, this was a different experience. Here I met warm, friendly people, I think much warmer than any place I had ever known. At the same time, as a way of background, I will tell you that I had civil rights status. I had a master's degree.

I applied to a Federal agency for a very small grade job, and the supervisor told me, "Oh, I don't think the people in here would like to work with you," and I was denied that job. That was the only reason that was given to me. And in 1961, there was no way and no place to turn.

Growing out of this rich background in discrimination, I saw hope and life in the march on Washington on August 26, 1963.

With the Civil Rights Act of 1964, I became a new person, with the hopes and aspirations of a new and better life for me and for my children and for all people who had been denied simple justice.

Through all these experiences, I have had a very special blessing. My father was a black Methodist minister, and always he taught us and drilled into us that you cannot fight effectively when you have a fever.

He said, "Hating people and acting out of madness makes you ineffective. Hate hurts you as much and maybe more than it does the person you hate. You must not be bitter to the point that it makes you ineffective."

I was taught to look for ways and means of acting in a wholesome, affirmative, and positive way. The Civil Rights Act gave me this positive, affirmative means.

The Supreme Court, in its ruling on February 28, 1984, in *Grove City College* v *Bell,* altered and changed the basic civil rights laws that were enacted over the past 20 years.

Over the past 20 years, four laws were enacted that prevented the Federal Government from supporting or subsidizing in any way any form of discrimination. These laws were based on simple justice.

The four basic civil rights statutes here are title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Now, I will not take the time here to read and explain the meaning of these statutes. You are acquainted with them. I won't take the time to give you the basic changes, as we see them, that will result in the denial of these rights.

Discrimination is systematic, it's planned. We have worked hard and we have come a long way in building our society, protecting the rights and privileges of all people. The civil rights laws have not changed the attitudes of all the people, but they have gone a long way in changing the behavior of most of the people.

Our society has become very sophisticated. Nobody or almost nobody would be willing to say to me, "You cannot have this job because I think the people in here would not like to work with you." The discrimination now is in the requirements for special training programs and other hidden devices.

You know that the head of the college, the head of the hospital, the Board of Directors, and so on, they are the ones who determine the policy for the whole of these agencies.

If only one activity or one program of a body is protected from discrimination, I see this as affecting the whole. This is a beginning that will eventually spread to the entire body and destroy our entire program and the things that we have worked very hard in bringing the Civil Rights Act of 1964 where it is today.

Now my father, as I told you, was a black Methodist minister, and he believed in drawing pictures. And one of the pictures he drew for us was taken from Job, 14th chapter, 4th verse, and that verse reads, "Who can bring a clean thing out of an unclean? Not one." To demonstrate this, he took a glass of clean water and in it he put one or two drops of ink and stirred it up.

He poured in more clean water, but the coloring was still there. Do you know what he had to do? Pour it all out, wash the glass and put in only clean water.

One drop of sophisticated dicrimination changes the whole civil rights structure, and before long, our whole society will be lawfully discriminating against its members. The Civil Rights Restoration Act of 1985 and H.R. 700, presented by Hawkins and Edwards, restores the law of simple justice for the members of our society.

Again, I thank you for this privilege.

[The prepared statement of Carnis Salisbury follows:]

PREPARED STATEMENT OF CARNIS SALISBURY, CHAIRPERSON, LABOR AND INDUSTRY COMMITTEE, NATIONAL COUNCIL OF NEGRO WOMEN

Mr. Chairman, this is an outstanding privilege for me to be able to speak before a committee concerned about the granted Civil Rights of a large number of our society at a time when these rights are being threatened. I represent a group of women who were organized by one of the movers of the Civil Rights movement, Dr. Mary McLeod Bethune, who organized the National Council of Negro Women. I had the opportunity to know Ms. Bethune and to catch some of the fire of her spirit of concern for people who were denied rights that were freely granted to other members of our society. I went to school in a small Texas town where I walked more than four miles to school with my sisters and brothers while the buses picked up kids all along the way that weren't our color. Bussing has been with us a long time.

I lived and worked in Austin, Texas when the University of Texas offered me tuition money to go to New York University. They were concerned, they just denied me the opportunity and convenience of attending the school of my choice.

I lived and worked in Marshall, Texas the home of James Farmer and Bill Moyer, I'd like to compare my notes of what I remember about Marshall, Texas with those Bill Moyer has of what he remembers and I must add that I am a fan of Bill Moyer. Marshall is a place where the bank wrote out my bank statement and then took the time and research to have an employee go through its bank statements and cross off the Mr. or Mrs. on bank statements going to a Black depositor. Yet, it is significant to me that in spite of all that I remember about Marshall, Texas, Marshall produced a James Farmer and a Bill Moyer.

In 1961 when I came to New Mexico with a Masters Degree and Civil Rights status, I applied for a job with a Federal Agency and was told by the Supervisor "Oh I don't think the people in this Department would enjoy working with you, We won't hire you for that reason". There was no one to turn to.

Growing out of this rich background in discrimination I saw hope and life in the March on Washington on August 26, 1963. With the Civil Rights Act of 1964 I became a new person with the hopes and aspiration of a new and better life for me and my children and all the people who had been denied simple justice.

Through all of these experiences I have had a special blessing My father, a Black Methodist minister always taught us and drilled into us that you cannot fight effectively when you have a fever. He said hating people and acting out of madness makes you ineffective. Hate hurts you as much as and maybe more than it does the person you hate. You must not be bitter to the point that it makes you ineffective. I was taught to look for ways and means of acting in a wholesome, affirmative and positive way. The Civil Rights Act gave me this positive, affirmative means.

The Supreme Court in its ruling on February 28, 1984 in the *Grove City College* v. *Bell* alters and changes the basic Civil Rights laws that were enacted over the past 20 years. Over the past 20 years, four laws were enacted that prevented the Federal Government from supporting or subsidizing in any way any form of discrimination. These laws were based on simple justice.

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Our society now has become very sophisticated. Nobody or almost nobody says "we won't admit you because you are different. The discrimination now is in the requirements for special training programs and other hidden devices.

The head of the College, the Board of Directors, etc. determine the policy for the whole. If only one activity or one program of a body is protected from discrimination, I see this as affecting the whole. This is a beginning that will eventually spread to the entire body and destroy our entire civil rights.

My father preached by drawing pictures and one of the pictures he drew for us was from Job 14th Chapter, 4th verse. "Who can bring a clean thing out of an unclean? Not one." To demonstrate this he took a glass of clean water and put in one or two drops of ink and stirred it up. He poured in more clean water but the coloring was still there. He had to pour it all out, wash the glass and put in only clean water.

One drop of sophisticated discrimination changes the whole Civil Rights Structure and before long our whole society will be lawfully discriminating certain of its members.

The Civil Rights Restoration Act of 1985 presented by Gus Hawkins and Don Edwards restores the law of simple justice for all the members of our society.

Mr. **Edwards**. Ms. Salisbury, we really appreciate your statement. It was different than a lot of statements we have received because it was personal. It had to do with your personal experiences and those of your family. Your father really must have been a remarkable man.

The subcommittee does appreciate your contribution.

The next member of the panel to testify is Susan Loubet. Ms. Loubet is a representative of the National Women's Political Caucus of Albuquerque.

Mr. **Richardson**. Mr. Chairman.

Mr. **Edwards**. Mr. Richardson.

Mr. **Richardson**. Mr. Chairman, I just wanted to acknowledge somebody else in the audience who will be making a later statement today. The League of Women Voters here in New Mexico has been very active on civil rights issues, and Bernie Beenhouwer, who is president of the league, is here.

I, regrettably because of this MX meeting, will not have a chance to listen to her brief statement later in the day, but I just wanted to acknowledge her presence here.

Thank you, Mr. Chairman.

Mr. **Edwards**. Thank you, Mr. Richardson.

Ms. Loubet.

Ms. **Loubet**. Mr. Chairman, members of the committee, and Congressman Richardson, I am Susan Thom Loubet. I am the president of the National Women's Political Caucus of New Mexico.

Passage of the Civil Rights Restoration Act in 1985 is the highest legislative priority for the National Women's Political Caucus, as well as for a broad coalition of women's and minority organizations.

We need this legislation to eliminate the confusion and backsliding resulting from the Supreme Court's *Grove City* decision and to restore a forward momentum toward equality.

Any aid to an institution will be counted in the overall balance sheet of that institution. You can't separate out one department's funding and say it's not part of the overall decisionmaking for the institution.

It is unconscionable that the Federal Government be in the position of financially supporting with our tax dollars discrimination in any part of an institution.

While it takes years for the effect of legislation of this scope to be felt, nationwide 63 cases brought to the Department of Education have been clothed, limited, or suspended already since *Grove City*.

In New Mexico it is certainly true that the momentum and public awareness of the move toward equality will be slowed. There is a study that is being done currently of the University of New Mexico.

It hasn't been made public yet, but there is going to be a study of the differences in salary and upward mobility for faculty at the university. And I believe, if this is brought up this afternoon, that it should be forwarded to the committee. This progress was slow enough as it was before *Grove City*.

About 3 years ago, as a board member of the YWCA, I put together a panel on title IX for the Y. At that time, one of the coaches from the University of New Mexico stated that the budget for publicizing all of women's sports at the university was the same as the amount of money spent just taking pictures of the men's football team. This was before the *Grove City* decision and with a State ERA.

It is clear that institutions do not self-monitor. The universities will not bring about equality out of the goodness of their hearts. Presently in New Mexico in our universities, there are groups of women forming internally to put pressure on the institutions to change. They need a clear, strong law to put teeth in their efforts. They need the backup of the Civil Rights Restoration Act.

I would like to bring to your attention some statistics from a nearby university, Brigham Young. In 1982, 8.2 percent of BYU law school graduates were women, while 60.6 percent at Northeastern in Boston were women. The national average was 32.9 percent. Institutions don't self-monitor.

With such great inequities, anything that slows the progress toward equality cannot be tolerated. House Resolution 700 would give us a clear legislative mandate to return to the situation before *Grove City*.

Senate bill 272, the Dole bill, would probably lead to litigation which, even if we won, would slow the pace of progress. Our analysis of the bill, that is from our national office, is that Senate bill 272 may well leave us stalled in the same limited situation as we are now in due to the *Grove City* decision.

Let me close by thanking you for holding these hearings around the country. It is important that, in the face of the administration's seeming reluctance to enforce civil rights, the voice of the people expressed through Congress be heard.

It is exciting that a coalition of new strength is being formed around this legislation. It seems that the harder the fight, the stronger the coalition becomes, and it also seems that women are not going to be separated out from this coalition.

Thank you.

[The prepared statement of Susan Thom Loubet follows:]

PREPARED STATEMENT OF SUSAN THOM LOUBET, PRESIDENT, NATIONAL WOMEN'S POLITICAL CAUCUS

Passage of the Civil Rights Restoration Act in 1985 is the highest legislative priority for the National Women's Political Caucus as well as for a broad coalition of women's and minority organizations. We need this legislation to eliminate confusion and backsliding resulting from the Spreme Court "Grove City" decision, and to restore a forward momentum toward equality. Any aid to an institution will be counted in the over all balance sheet of that institution. You can't separate out one department's funding and say it's not part of the overall decisionmaking for the institution. It is unconscionable that the federal government be in the position of financially supporting with our tax dollars discrimination in any part of an institution.

While it takes years for the effect of legislation of this scope to be felt, nationwide, 63 cases brought to the Department of Education have been closed, limited, or suspended since Grove City. In New Mexico, it is certainly true that the momentum and public awareness of the move toward equality will be slowed. This progress was slow enough as it was. About 3 years ago, as a Board member of the YWCA, I put together a panel on Title IX for the Y. At that time, one of the coaches from the University of New Mexico stated that the budget for publicizing all of women's sports at the University was the same as the amount of money spent just taking pictures of the football team. This was before the Grove City decision and with a state E.R.A. It is clear that instituions do not self-monitor. The universities will not bring about equality out of the goodness of their hearts. Presently in New Mexico, in our universities, there are groups of women forming internally to put pressure on the institutions to change. They need a clear, strong law to put teeth in their efforts. They need the back-up of the Civil Rights Restoration Act.

Since you will be hearing testimony this afternoon from BYU, I thought you'd like some statistics from that university. In 1982, 8.2 percent of BYU law school graduates were women, while 60.6 percent at Northeastern were women. The national average was 32.9 percent women. Institutions don't self-monitor.

With such great inequities, anything that slows the progress toward equality cannot be tolerated. HR 700 would give us a clear legislative mandate to return to the situation before Grove City. Senate Bill 272, the "Dole Bill" would lead to litigation, which even if we won, would slow the pace of progress. Our analysis of the bill is that S. 272 may well leave us stalled in the same limited situation as we are now in due to the Grove City decision.

Let me close by thanking you for holding these hearings around the country. It is important that in the face of the Administration's seeming reluctance to enforce Civil Rights, the voice of the people expressed through Congress be heard. It is exciting that a coalition of new strength is being formed around this legislation. It seems that the harder the fight, the stronger the coalition becomes and that women are not going to be separated out.

Mr. EDWARDS. Thank you very much, Ms. Loubet.

That is really very helpful testimony. The next member of the panel to testify is Ralph Markward. Mr. Markward is president of the Paralyzed Veterans of America, Zia Chapter.

Mr. Markward, you are welcome. We are delighted to have you here.

Mr. MARKWARD. Good morning, Mr. Chairman, members of the committee.

I am Ralph Markward, president of the Zia Chapter of the Paralyzed Veterans of America. I am pleased to speak in favor of the 1985 Civil Rights Restoration Act, which will renew protection against discrimination on the basis of age, race, sex, national origin, and handicap.

Much of the job is dealing with Government officials regarding enforcement of existing rights of access for mobility-impaired persons, especially wheelchair access.

The element that is most frustrating to me is the number of times I am called upon to justify the need for something that not only is obvious, but just something that is already the law. Until some people are beaten with a 2 by 4, they just won't change their bad habits.

The disaster implied in the *Grove City* case is the complete absence of guidance for bureaucrats to assess exactly what program or activity is involved. Since the Supreme Court set the example of picking a program virtually out of the air with not good, rational basis, we can expect even more bizarre choices from people not wanting to provide equal treatment to all.

Handicapped discrimination is present even in the civil rights movement, and I am very glad that we are all here together with our common interest. When affirmative action plans are written, there is usually an analysis of the number of blacks, Hispanics or other minorities, but seldom any reference to numbers of handicapped employees.

The census indicates that we are potentially 9 percent of the work force, but many disability groups, such as the spinal cord injured and the members of Paralyzed Veterans suffer unemployment rates in excess of 87 percent.

We need more protection. We need the Restoration Act. We need to see Congress raffirm the strong defense of equality put into place with the passage of these provisions originally.

Now I would like to give you an overview of 504. Passage of the Civil Rights Restoration Act of 1985 is important to our organization because our membeship encompasses a broad spectrum of race, gender and age.

The PVA, since its inception, has diligently pursued and continues to pursue removal of attitudinal and architectural barriers that prohibit social acceptance and involvement of the disabled person moving toward equal opportunity in employment, housing, transportation, recreation and education programs conducted by the Federal Government.

Mr. Chairman, in my presentation today, please note that we firmly believe it is of importance to provide you with an examination of some prior activity or inactivity surrounding the enactment of the civil rights laws, rather than a case-by-case illustration of individual discrimination practices.

As a result of the poorly administered laws, it is also important to provide a brief portrayal of those court actions PVA has initiated and/or supports while pursuing our civil rights. These efforts reflect our dissatisfaction with the performance of those agencies who persist or refuse to respond to their responsibility to properly implement and enforce existing laws.

Over the years, PVA has sought the passage of legislation in various areas which was intended to improve or assist in the quality of life of the disabled person.

Consequently, we have seen success in this area. In fact, in 1984 the 98th Congress passed legislation that provides for vocational training and employment assistance to veterans to enable them to reenter the workforce. This measure included the Veterans' Benefits Improvement Act of 1984, Public Law 98-453.

Unfortunately, on the other hand, the same Congress did not pass a civil rights measure which would reinforce the efforts of individuals to pursue further education, with the purpose of becoming more self-reliant, participating members of the community.

The failure to pass a Civil Rights Act of 1984 has seriously weakened the confidence of those who need the support to become involved in there and thereby restricting their ability to pursue their maximum potential.

PVA maintains a firm, supportive posture that H.R. 700, as you intended, Mr. Chairman, does not expand existing laws, but simply restores the laws to pre-*Grove City*.

Both the Civil Rights Acts of 1984 and 1985 are designed to overcome the damaging effects of the 1-year-old Supreme Court decision, *Grove City College* v. *Bell*, which undermines much of the prohibition against sex discrimination in any program or activity receiving Federal financial assistance.

Again, let us look at the historical administrative approach surrounding the law. President Ford issued Executive Order 11914 in 1976, banning discrimination with respect to the handicapped in federally assisted programs which provides for consistent implementation within the Federal Government of section 504, the Rehab Act of 1973.

The *Grove City* Supreme Court decision, supported by the present administration, changed that order. It is evident that by itself, the Presidential Executive order was not sufficient to alter discrimination practices toward disabled persons in Federal Government.

It was not until January 3, 1978, under extreme pressure from the disabled community, that the Honorable Joseph Califano, Jr., who was then Secretary of Health, Education and Welfare, signed the agency rule to implement Executive Order 11914.

Unfortunately, this was not the end, because even today many Federal agencies have not yet finalized or even begun to implement the 504 regulations.

In June 1982, the Civil Aeronautics Board proposed a final rule implementing section 504 of the Rehab Act and section 404, the nondiscrimination section of the Federal Aviation Act.

In November of that same year, the CAB issued supplemental provisions to change several sections of the rule that were found to be objectionable. Nonetheless, it fell short of meeting the nondiscrimination provisions of section 504 and was objected to by our organization.

On January 14, 1983, we joined other disability rights organizations in a petition before the U.S. Court of Appeals for the District of Columbia to review the CAB's final 504 regulation issued on June 16, 1982.

In its brief, PVA challenged three main provisions of the final rule which it believed violated 504. The points of contention were the CAB's narrow definition of Federal financial assistance.

Two, restrictive definition of qualified handicapped person. And three, advanced notice requirement of up to 48 hours for the provision of extensive special assistance, which included boarding equipment and aisle chairs.

Let me say something beyond what I have prepared here. I fly on an average of 8 to 10 times per year, and the thought of having to call an airline 48 hours in advance of my planned trip I really find extremely objectionable.

The Paralyzed Veterans of America joins in the women's effort and that of the Leadership Conference on Civil Rights and 200 other concerned organizations who demand the restoration of our civil rights.

PVA believes that equal opportunity without enforcement of the law is not equal opportunity. The final question amounts to this. How can America allow this discrimination to flourish and truly enjoy patriotism?

Mr. Chairman, in conclusion, I thank you for this opportunity to present PVA's concerns on this matter. I will be happy to answer any questions you may have.

Mr. Edwards. Thank you very much, Mr. Markward. Your testimony makes very clear the interests of handicapped people in this legislation. It's very, very helpful.

The next member of the panel to testify, I believe, is Mr. David Montoya. Mr. Montoya represents the State Human Rights Commission and is based here in Santa Fe. Mr. Montoya, you are welcome.

Mr. Montoya. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, let me just state that Governor Anaya, the Governor of New Mexico, very eloquently covered in his testimony the role of is administration in human rights and the Human Rights Commission, which is a part of Governor Anaya's administration, our civil rights policies, the way these policies are administered and his overall feeling and the feeling of, we believe, the majority of the citizens within the State of New Mexico on discrimination. He was tremendously humble in expressing his support for civil rights.

In fact, I feel the record should show that he was instrumental in amending the New Mexico Human Rights Act to put more teeth in the manner in which the State deals with discrimination.

The Human Rights Act in New Mexico covers not just employment, but also public accommodations, housing and credit. The Governor's amendment removed a $1,000 limitation that existed on damages that a complainant could request and now provides for actual damages, reasonable attorney fees and affirmative action remedies to deal with problems identified. So, as you can see, the Governor's amendment did much in broadening the coverage of the Human Rights Act.

What is interesting in being the executive director of the New Mexico Human Rights Commission and having worked for Federal civil rights programs is that currently many Federal agencies are approaching State agencies such as the New Mexico Human Rights Commission to assist them in attempting to enforce nondiscrimination.

They are aware of the broad coverage and broad interpretation of statutes such as the New Mexico Human Rights Act, and I think that basically shows the weakness that occurs now and has occurred in the last 4 years in the area of enforcement of civil rights law.

Mr. Chairman, members of the committee, we are concerned with current civil rights enforcement, not just after *Grove City*, but even before *Grove City*.

Right now in civil rights organizations, members who are discriminated against have to rely completely on agencies for providing funding to enforce themselves. Once an individual proves that they have been discriminated against, they must then rely on the Justice Department to pursue the discriminatory action, and we all know that in recent years, the Justice Department has not been completely responsive to the wishes of women and minorities, and I think I am being somewhat kind in stating it in that manner.

Once a discrimination complaint has been filed, the person who has been discriminated against, the group, whether they be handicapped, whether they be black, Hispanic, or female, must wait years before the remedies are dealt with.

Again, Mr. Chairman, I am here to participate in the panel. The Governor very eloquently expressed the position of New Mexico on the area of nondiscrimination. I thank you for being here, not only as a native of Santa Fe, but as one who frequents the Halls of Congress and seeks support from such individuals as yourself, Mr. Chairman, and others in pursuing the rights of minorities, women, the handicapped and other disadvantaged groups.

Thank you very much.

Mr. EDWARDS. Thank you, Mr. Montoya We thank you for your help this morning. We are going to need your help in the next few weeks and few months in Washington once again.

The next member of the panel to testify will be Prof. Paul Nathanson. Professor Nathanson is from the school of law of the University of New Mexico in Albuquerque. You are welcome, Professor.

Mr. NATAHANSON. Thank you very much, Mr. Chairman, members of the committee.

It is a great pleasure for me to be here, and I would like to compliment you on holding this hearing in Santa Fe. This is obviously a very timely and important topic.

I am currently the director of the Institute of Public Law at the University of New Mexico, and I teach courses in legal problems of the elderly and have in the past run a clinic in rural northern New Mexico, in Congressman Richardson's district, providing free legal services through the law school to the elderly, Indians and Hispanics primarily.

So, I have a couple of perspectives, because in another life, prior to moving to New Mexico, I was the director of the National Senior Citizens Law Center in Los Angeles and in Washington, DC, and a member of the American Bar Association's Committee on Legal Problems of the Elderly, and I am currently president of a group called the Western Geriatological Society, which has over 4,000 members across the country.

In 1975 I had the distinct pleasure of working with then Congressman Bradley and his general counsel, Jack Duncan, on the 1975 Older Americans Act Amendment, which for the first time brought discrimination into the civil rights picture. You have heard long statements, eloquent statements, from other people today, and I really want to just very briefly make a couple of comments.

We found at that time, and I think the situation continues, that the elderly were oftentimes underserved in Federal programs for various reasons, many of which were biases. Even in the legal services community, which I was an integral part of, we found that programs were not acceptable.

They were located in areas which older people could not get to or found it difficult to get to. We found that, therefore, there was a very low percentage of people receiving legal services to help them pursue Social Security, SSI, food stamps, and other Government benefit claims.

Most importantly or at least as importantly, we found that in community mental health centers and other services in the community, the elderly were disproportionately underserved or they were underserved. And I think this is an important point to make right now, as you move across the country, in terms of health care cost containment.

We are in New Mexico here trying to provide community-based services, long-term care services for the elderly and to keep them out of the very expensive nursing home settings.

One of the things that needs to happen is that the community-based services that are around make themselves more available to the elderly so that they will be able to avail themselves of those services, as well as stay out of nursing homes.

I think it is very important that the Congress send a strong message to service providers, professionals who deal with the elderly and all the constituencies that you have heard from here today.

I think that the elderly themselves, many of whom in this particular—if I can sound like a sociologist for a moment—age group are not particularly aggressive about their rights. I think it is important that they know that the Congress cares that their rights will be defended. And I think that that kind of a broadest possible interpretation of civil rights legislation is extremely important to give that sense to older people specifically.

Of course, I believe that enforcement of any existing legislation is really the key. Perhaps that is a lawyer's argument, but I teach a class on legislation at the law school, and I tell the students that it is relatively easy—and pardon me for this—to pass legislation on 1 day and the next day go back and not provide sufficient funds to enforce that legislation or draft regulations that will ultimately enforce those regulations.

I recall that in 1976, when the Age Discrimination Act of 1975 came about after the initial Civil Rights Commisison study that was mandated by the Senate and ultimately by the Congress, it was then up to the Labor Department to enforce it.

I think there was something like $22 million provided nationwide to enforce the Age Discrimination Act of 1975. One needn't be a genius to figure out that there isn't going to be a lot of enforcement with that kind of appropriation. Enough said about that.

I also want to underscore finally the message that people gave you today about agencies and various entities, universities, not really understanding that they had better get their act together, so to speak, in this arena.

It is extremely important, because what you see in Washington when you pass legislation is unfortunately oftentimes very different from what ultimately trickles down to the real people on the street. And obviously you are aware of that. That is why you are here, and I want to commend you for that.

I have a little anecdote. It was my pleasure about 4 years ago to bring Dr. Arthur Flemming out to New Mexico, as you know, the former Chairman of the Civil Rights Commission, and we took a trip to visit with the then president of the University of New Mexico, who is now in Oregon.

And the tenor of that conversation, his major concern, was really whether or not men and women were going to have to play on the football team together. And the issues, the broad issues that Dr. Flemming wanted to raise, in terms of age discrimination in general, unfortunately I don't think were heard.

I know we have a new administration at the university, and I have a sense that they are more sensitive along these lines.

But in any case, the message is that you have to use every possible means to make it all happen down at the street level.

Thank you very much.

Mr. **Edwards**. The last member of the panel to testify will be Ms. Cindy Roybal. Ms. Roybal is the coach of the Santa Fe Indian School. You are welcome. You may proceed.

STATEMENT OF CINDY ROYBAL, SANTA FE INDIAN SCHOOL

Ms. **Roybal**. Mr. Chairman, members of the committee and Congressman Richardson.

First of all, I would like to apologize for my attire, being that I am just right out of school and my PE class. And I felt that this was such an important meeting, and luckily Mr. Montoya got in touch with me. So I thank him for that and for affording me the opportunity to speak to all of you.

Athletics, like no other single facet of education, teaches an individual more about life. It teaches you how to win, it teaches you how to lose, and it helps you to work for a common goal, a common cause, and it is an entirety team effort, just like people out there.

Since the beginning of time itself, women have been striving for equality. As we look at history, women have always fought for equal rights. Examples of this are women fighting prior to even being given the right to vote, to work, to teach or to obtain certain employments which have dominantly male. The guest for equality has always been a goal by women in every generation.

The world of sports and athletics has had the image of women who are physically weak, dependent upon males, abhorred by the thought of engaging in physical contests among themselves.

It has not been until recent years that this concept of women in sports has taken a new insight. Women were supposed to have cookies and punch days and were kept away from true, hard core competition.

Competitive sports has always demonstrated the qualities of strength, agressiveness, self-esteem, and leadership, all qualities which were traits only to males had to possess. Women who demonstrated such qualities were social misfits. It was not being in the normal society that made it difficult for women who wanted to participate in sports.

Congresswoman Martha Griffiths made the following statement in 1972 on womens' sports.

> If winning is not everything, as many of my colleagues have no doubt informed their children after an excruciating loss in an athletic contest, and if sports really do build character as well as sound minds and bodies, then why should the men

have a monopoly on our athletic facilities and resources? In my opinion, they should not.

Women must be provided with adequate funds for equal opportunities, equal opportunities such as equipment, scheduling facilities, practice time and coaching.

The sad thing is the struggle to weaken title IX is not the principles for which title IX stands. Very little time is spent on whether or not the principles are right or wrong, but more people are concerned with the financial burden they feel that title IX might impose on a men's program.

At our school we are very fortunate and our successes have come, and I feel that our men's program has become better because of the girls' program. And although we have a phenomenal record in the years that I have been coaching there, we have acquired approximately 104 victories, as opposed to 20 losses, that is like the icing on the cake.

The most important aspect of the whole thing is the opportunity that we could provide young females and, in our case, young Indian females. We provide them with an opportunity that they will no longer have. And it is not specifically title IX that has helped us in our quest for equality, but I think it is just women speaking out for themselves.

Thank you very much.

Mr. **EDWARDS**. Before we begin the questioning, I believe we have a representative from the League of Women Voters here, and we will be pleased to receive a short statement from you. Would you please identify yourself and proceed?

STATEMENT OF BERNIE BEENHOUWER, NEW MEXICO LEAGUE OF WOMEN VOTERS

Ms. **BEENHOUWER**. Thank you very much. My name is Bernie Beenhouwer, and I am representing the League of Women Voters of New Mexico.

Mr. Chairman, members of the committee, the League of Women Voters has long worked for equality of opportunity for all people in this country, and we urge support of H.R. 700. With all due respect for the Supreme Court, we believe that the decision in *Grove City College* v. *Bell* constitutes a serious misinterpretation of the intent of this Nation's hard won Civil Rights Act.

We agree with the wording of H.R. 700, which takes the phrase "program or activity," narrowly interpeted by the Supreme Court, and defines it clearly to cover a particular institution in all its activities.

If all human beings were benevolent and would take this approach to all others of human race, perhaps we would need none of these rulings.

Finally, I will state that we believe that our Nation must be governed by even-handed civil rights laws that guarantee protection from discrimination in all parts of all institutions that receive Federal money as part of their support.

This principle is expecially important in practice, because many of the persons most often discriminated against, the poor, the handicapped, minorities, the elderly, are those least able to speak up and fight for their rights. Anything less than full support of House Resolution 700 and its companion Senate bill, Senate 431, leaves our Civil Rights Act weakened and our Government's intentions questionable. Thank you very much.

Mr. **Edwards**. I believe that this concludes the testimony of the various members of the panel, and I recognize the gentleman from Illinois, Mr. Hayes.

Mr. **Hayes**. Thank you very much, Mr. Chairman. I have been fortunate enough to attend all of the other previous hearings on H.R. 700 in other parts of our great Nation, but I don't think I have witnessed such a unanimity of support for H.R. 700 as I have seen here this morning. All the testimony has been good, and I am certainly appreciative of it.

I don't have any specific questions, except to say to the witnesses who have appeared here that my dilemma is finding a way to transmit the kind of support that you have displayed here through testimony to the people who are Members of both Houses of Congress, who have to vote on this issue.

I do hope there is some way some of the people who are inclined to oppose it might read some of the testimony that will be a part of the record of this hearing and that it might have some influence on them. Thank you very much, Mr. Chairman.

Mr. **Edwards**. Mr. Markward, have you already begun to notice the effects with your members of the decision in *Grove City*?

Mr. **Markward**. Mr. Chairman, I can't specifically state any instances to that effect personally, but I am sure that there are instances happening already.

Mr. **Edwards**. Well, the incident you mentioned with regard to the 48-hour notice that some airlines are requiring before a paralyzed person, is that correct, can be allowed to fly on an airplane, that would seem to me to be rather—would be narrowed by *Grove City,* or was that an FAA restriction?

Mr. **Markward**. Well, let me answer it this way, Mr. Chairman. It was just a few months ago that a State legislator from Florida attempted to travel from, I believe, it was in Miami area to Tallahassee, to the State capital, via commuter aircraft and was denied passage, and we can expect to see more of this.

I would also like to add that one of the requirements of my employment is that I have to be able to travel, and I travel at least six times a year to Washington, DC, where our national office is located. In fact, I just came back Saturday night. And without the right to travel on an airline, I would be denied an opportunity to be gainfully employed.

Mr. **Edwards**. I think that would potentially hit handicapped people in the United States. For example, at a university, handicapped people need assistance on a campus-wide, system-wide basis, and I know that it has been just one battle after another to require that educational institutions provide handicapped persons with appropriate facilities.

So do you think, insofar as your organization is concerned, and handicapped people in general, that it is essential that *Grove City* be reversed?

Mr. **Markward**. Yes, Mr. Chairman. And I would also like to mention that with the impending threats of cuts of revenue sharing funds, that the cities are already thinking and telling us that they don't have to do their transition plans right now. So this is a direct result of the *Grove City* findings, and we can expect to see more of that, I am positive.

Mr. EDWARDS. Thanks. Ms. Roybal, I think we were all impressed with the accomplishments of the women athletes of United States in the Olympics at Los Angeles. They made us all very proud that they did so well on an international basis. Have you any idea how many of those women would have not had the opportunity to develop their athletic prowess had it not been for title IX?

Mr. ROYBAL. No, sir, I don't. But I do know that I played professional basketball for a year, and I came from a high school that did not afford me the opportunity to play. Luckily enough, I had some brothers that pushed me into it. And I feel real saddened by the fact that I felt, with a little bit of coaching, I could have played for the Olympic team. That is why I am such an advocate of women's sports and title IX.

Mr. EDWARDS. Thank you. You have been very helpful.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you. Mr. Markward, what would be your reaction if I told you that Congress was exempted from the provisions of section 504 and other civil rights acts, which we are?

Mr. MARKWARD. I am not enthused about it.

Mr. SENSENBRENNER. Would you or your oganization support an amendment to bring Congress under the coverage of section 504 and the other civil rights acts?

Mr. MARKWARD. I can't speak for our national organization, but having been a national vice president for 3 years, I can assure you that we would support that move.

Mr. SENSENBRENNER. Well, just for the record, there was an amendment that was offered in 1984 to a similar bill, which the supporters of this legislation very vigorously opposed unsuccessfully, and it was adopted, and Congress was brought in under the coverage in the House-passed bill. And I am certain that there is going to be another attempt this year to take away the exemption that we in Congress presently enjoy from the laws that we pass and impose upon everybody else in society.

I have a few questions of Professor Nathanson, if he could step to the microphone. One of the arguments that has been made about this bill is that it goes beyond restoring the law to its status prior to the *Grove City* decision, particularly in the private sector of our economy.

And in each of the four civil rights laws that this bill amends, there is a catch-all phrase relating to the private sector that says, "Any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3)."

Since you are the lawyer on this panel, let me ask you a couple of questions on how you would interpret this. Now we know that most of the farmers in the United States either directly or indirectly benefit from Federal price support programs. Do you think the farmers would be brought in under this as indirect beneficiaries under this catch-all phrase?

Mr. NATHANSON. As a lawyer, I probably ought to say that I really need to have the legislation and the language in front of me and do a little bit of studying about it. I am reluctant—this isn't just a bureacratic answer—to give you a visceral response. I am here to make a general statement that I would like to see the coverage be as broad as possible, and beyond that I have not spent any time studying the individual sections of the language.

Mr. SENSENBRENNER. Well, one of the specific sections says that the coverage extends to a corporation, partnership, or other private organization. So that means that if one plant of General Motors takes some job training partnership funds in order to provide job retraining and more job opportunities, that all of General Motors is brought under the coverage of this bill, even if none of the other areas of General Motors get Federal funds. I am just using this as a hypothetical because General Motors is one of the biggest corporations that we have.

There were three court decisions that said that before *Grove City* the coverage of these four civil rights acts was program specific. In other words, it wasn't even plantwide, but it was just the program that accepted the Federal funds directly.

Now given this explanation, would you say that if the coverage is corporationwide, that that is broader coverage than what was the law before *Grove City*?

Mr. NATHANSON. Well, it is hard to say. Again, that hat I have on now is as an advocate for the elderly. And very frankly, if the end result of the legislation is to do away with discrimination on the basis of age, even within the broad spectrum of General Motors, as an advocate, I wouldn't be opposed to that. Technically speaking, I really need more time to look through the legislation to give you a legal analysis.

Mr. SENSENBRENNER. Unfortunately, the sloppy drafting that Congress did 11 years ago in passing title IX is what brings us here today, and the court misconstrued what the intent of Congress was and how broad the coverage ought to be.

And that is why I think it is very important that we not repeat the same mistake and be extremely specific on what the intention of Congress is and how broad the coverage ought to be, so that we don't have more litigation and perhaps another *Grove City* type decison being rendered by the Supreme Court some years hence.

And that is why I am asking you these specific questions, and perhaps I have taken unfair advantage of you. But you are the lawyer on the panel, and I figured that you would be the one that the questions would be most spcifically directed at.

But I think the fact that you really can't say specifically how far or how narrow the coverage is shows that this bill does require some refinement so that, if it should be enacted into law, the courts will know exactly what Congress intended and we will not have varying interpretations and different strokes for different folks apply.

Now let me ask you one further question relative to age and handicapped discrimination. Most of the attention on age and handicap discrimination has been given to senior citizens and people who are handicapped during their working years.

However, if this bill is passed, wouldn't the civil rights laws apply, for example, in the *Baby Doe* case where, if an infant were born with a series of handicaps or developmental disabilities and there was some talk in the hospital of letting that child starve to death during its first week or two of life—the child has got a handicap. The child obviously is at the bottom end of the age scale, rather than at the top end of the age scale. Do you think it would apply there?

Mr. **Nathanson**. I don't know. I am sorry to give you that kind of an answer. I am just reluctant, not having studied the bill and the legislation, to give you a lawyer's answer on it.

Mr. **Sensenbrenner**. But as a matter of public policy, do you think it ought to apply there?

Mr. **Nathanson**. So as to protect the individual?

Mr. **Sensenbrenner**. So as to protect the newborn child who is born with multiple handicaps.

Mr. **Nathanson**. Are you a law professor? I think you are doing an excellent job on the Socratic method.

Mr. **Sensenbrenner**. It is time to turn the table and ask a question of the professor.

Mr. **Nathanson**. I don't like the Socratic method. I don't use it. But as a matter of public policy, I am not sure. There are countervailing policies involved in that issue, and I really haven't given it any thought.

Mr. **Sensenbrenner**. Assuming, for the sake of argument, your answer is not, these civil rights laws should not apply there, as some have advocated, aren't we then saying that the civil rights laws don't apply to all Americans and, in effect, we are having different strokes for different folks?

Mr. **Nathanson**. I am not sure I follow that.

Mr. **Sensenbrenner**. Well, if age discrimination laws apply only to senior citizens and not to younger people——

Mr. **Nathanson**. Well, my understanding of the Age Discrimination Act of 1975 is that it applies at both ends of the spectrum, that there are sections for minors and others. Again, in general terms, it is not just older people who come under the Age Discrimination Act.

Mr. **Sensenbrenner**. I am one who believes that the civil rights laws should apply to all Americans. If they don't they ought to apply to all Americans, whether it be newborn infants or Members of Congress of the United States. But again we are looking at specific laws, that that is what courts interpret or misinterpret, as in the case of *Grove City*.

So my opinion, the real impetus for professionalism in drafting and making clear what the intent of Congress is rests on our shoulders, rather than copping out and letting the courts do their thing in interpreting the mess that we may have passed.

Mr. **Nathanson**. I certainly agree with you on that point, that there ought to be as refined a drafting as possible. I know in the employment area, the court has looked very narrowly at some of the legislation. And my sense is that, unless given clear direction by Congress, that may be a problem in this kind of legislation.

Mr. **Sensenbrenner**. And my final question is, do you believe, "Any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3)," is very clear? That is a quote from the bill.

Mr. NATHANSON. It sounds lawyerlike. Any other entity——

Mr. SENSENBRENNER. Do you want me to read it again? "Any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3)." That appears four times in the bill as an amendment to each of the four statutes.

Mr. NATHANSON. As a former tax lawyer, I have sympathy for that kind of language. I can understand it. I think it tends to be kind of difficult perhaps for the public to understand, but I get the message from that language.

Mr. SENSENBRENNER. It is clear and precise or vague and imprecise?

Mr. NATHANSON. Well, it is a drafting technique that is used in the State legislature here and all over to be a catchall. I think what I hear and what I, as a member of the public would get, and hopefully the court, in terms of legislative history, is that the Congress is sending a very strong message, upon hearing about this type of discrimination, wanting to cut it out in all entities in as broad a way as possible; and that if there is something that they haven't specifically thought of, they want it to be covered later on. That is how I would read the legislation.

Mr. SENSENBRENNER. Well, perhaps with catchall language like this, it is no wonder that the United States has far more lawyers per capita than any other nation in the world. Thank you.

Mr. EDWARDS. Thank you, Mr. Sensenbrenner. I am sure the people here today will understand from Mr. Sensenbrenner's very acute questioning that there are problems that we will face down the road in the interpretation of this very important bill.

And for the information of people who might be present here today and New Mexico generally, yes, there is legislation pending in the House of Representatives to include Members of Congress under all of the various civil rights laws, and a lot of us have been pushing it for a long time. And from what Mr. Sensenbrenner says, we welcome his support.

However, I want to point out that we do not want it as a part of this bill. It would cause great damage to this bill, and we would lose a lot of votes for this bill. It could probably defeat the bill. And I presume that it will be brought up, and we will resist it very strongly and take whatever heat might result from our resisting such an amendment, which would only be put forward for the purpose of damaging the bill.

Mr. Richardson.

Mr. RICHARDSON. Mr. Chairman, I would rather not get into an argument with my colleague, Mr. Sensenbrenner, but I think we are talking about a matter of interpretation. Presently, we have Civil Rights Commission that interprets a law as being discriminatory toward minorities if one enforces the law. And we have clearly the chairman of that commission, Mr. Pendleton, and Ms. Chavez, the staff director, who are fighting the issue of affirmative action. They are fighting the issue of the enforcement of reverse discrimination in that case, in all manners, and comparable pay for comparable worth.

With all due respect to my colleague, those of us that try to enforce the existing laws many times are baffled by how that law is interpreted through the political appointments to this commission. So not trying to rescue my friend, the attorney, I think that point should be made, and I make it recognizing the validity of my colleague's honor.

Mr. **Edwards**. Mr. Hayes.

Mr. **Hayes**. Just an addendum to what my colleague, Congressman Richardson, has said here. From the testimony that I have heard so far from people who oppose H.R. 700 in other hearings, which I think may tend to be the kinds of positions that will influence people in Congress to vote against H.R. 700, there have been such matters as whether or not it is an infringement on the right of a religious institution, for example, to function without interference from the Federal Government.

These are the kinds of issues I think that will ultimately determine whether or not H.R. 700 goes up or down. Such issues as whether or not a doctor, for example, has to remodel his office so as to provide easy access for people who are handicapped to the office; whether or not this amount of money should be required by Federal action. These are the kinds of issues that are to just mere language changes in the bill itself. In other words, these are determining factors, as I understand it, of whether or not we get the support or we don't get the support.

Mr. **Edwards**. Thank you. I believe this winds up the hearing for this morning. The message of H.R. 700 is that if you accept Federal funds, you don't discriminate. It is as short and as emphatic as that. Mr. Sensenbrenner's observations are very valuable, as they will allow us to write the report to answer the various questions that come up so that we will be very explicit in the report. Each and every possible problem will be answered.

Mr. Richardson.

Mr. **Richardson**. Thank you, Mr. Chairman. I wonder if it would be appropriate, in the course of this hearing, if I could yield my questions to just a brief statement by Mr. Joe Ortiz, the head of the American Group of New Mexico. He would like to make, this statement if the committee permits.

Mr. **Edwards**. He may proceed.

STATEMENT OF JOE ORTIZ, AMERICAN IMAGE GROUP

Mr. **Ortiz**. Thank you, Bill. Mr. Chairman, Members of Congress, one of the things that we would like to emphasize in this bill is what our experience has taught us in addressing the other civil rights bills that were enacted, 504, the Civil Rights Law of 1974.

One of the problems we see through the civil rights programs is if the program is funded for so much money, that is the only area you can address as discrimination, which means that you can't look at discrimination in the other areas, and I think this should be considered very heavily in this bill. There should be no limits.

If they are going to receive funding from the government, whether it is one penny, they should be liable down the line if they are discriminating, whether it is on that program or not. They should be accountable for it.

The other issue that we have run into quite a bit is, what Federal agency is going to be the enforcing agency on this? And whatever agency is going to do it should do its job. Our experience has taught us that if we go ahead and file with the Department of Labor, with the Department of HHS, or whatever department or agency or whatever civil rights act that they are enforcing, title VI, title VII, or title IX, there is no enforcement procedure. They go through the motions, they give us a report, but the discrimination still continues.

So I think that if you are going to consider this in this bill, I think those two areas should be considered very heavily, the enforcement of it and getting it corrected within the time limitation within reason.

And, too, if somebody receives only one penny of Federal money or my State tax money, they should be fired or be held responsible for any area of discrimination in that area.

I can't understand how our Federal Government can put out a bill and enforce the nondiscrimination, let's say on national origin, race, color, and that is it on this program for so much money. Does that mean that the employer can continue to discriminate without Federal money in the other areas, handicap, age? So we have got to address that issue.

Second, if you have got a program and a facility in one area and he is doing it in another area and he is not putting the money into that program, we cannot file charges or get that area corrected because it is over in this other area.

No; I think this bill should broaden itself, and I think it should be clear to the public of who the enforcing agency is. Thank you.

Mr. **Edwards**. Thank you very much. I think that will be made very clear in your report.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Mr. Chairman, one of the reasons why last year's bill failed is that the supporters of the bill in the House said that all it did was restore loss of the state that existed prior to the *Grove City* case.

When the bill got over to the Senate, there were a number of Senators, led by Senator Hatch, of Utah, who very clearly demonstrated that that was not the case. And as a result of of this failure of truth in advertising, there were a sufficient number of Senators that voted against cloture, and the bill was filibustered and subsequently tabled.

There are a number of reputable organizations that have expressed concern about the fact that broad generalizations simply won't suffice when we are dealing with a specific law. And there is a rather intensive memo that has been written by the general counsel for the U.S. Catholic Conference, which has been in the forefront of fighting for civil rights historically, that says, "broad generalizations that either the House bill or the Dole bill would merely return the law to its prior state do not accurately describe the situation. That is a legal anaylsis."

Now if the House wants to broaden civil rights laws, then the House should say so during debate. If this bill merely attempts to restore the law to what everybody thought it was prior to the *Grove City* decision, then we should say that, as well. I don't think the cause of civil rights is served by having another bill go down the drain. I want to see a bill passed and signed into law to return the Supreme Court decision in *Grove City*.

But I think the only we way are going to be able to do that is by doing a specific drafting job and making it quite clear that what the Congress wants to do is to provide nondiscrimination in a program-specific area or a broader area, if that is the choice of Congress, rather than having all of these questions that have been raised by lawyers who are far more learned and far more articulate than I am.

Playing political games with this bill, I think, is going to result in another defeat. I think the time has come for bipartisanship in answering some of these questions, and it was through bipartisan support that all of the major civil rights acts were passed up until the mid-1970's, and that is the approach with which the Republicans on the Judiciary Committee and the Republicans on the Education and Labor Committee are approaching this.

We don't want to see a bill passed by the House with a strong vote, simply to be picked apart in the Senate again, because I personally was embarrassed last time in going to my Senate colleagues and saying that last year's bill merely restored the law to its pre-Grove City situation, when, in fact, Senator Hatch was able to prove otherwise, and he won and we lost.

Mr. **Edwards**. Thank you, Mr. Sensenbrenner. We on the majority side are certainly going to welcome the support of the Republicans of both the House Judiciary Committee and the Education and Labor Committee, as they have given us in the past on important civil rights bills and which Mr. Sensenbrenner did in a magnificent way in the improvement, strengthening, and extension for the Voting Rights Act in the last Congress.

Are there any further questions from Mr. Richardson or Mr. Hayes or Mr. Sensenbrenner?

We thank the witnesses this morning. It was a tremendously important hearing we had, and all of the witnesses were great. We will meet again at 1 o'clock promptly, because we have to quite at 2 o'clock, so we will start right on time.

[Whereupon, at 11:50 a.m., the committees recessed to reconvene at 1 p.m., the same day.]

AFTERNOON SESSION

Mr. **Edwards**. The committee will come to order. We are continuing these hearings here in this beautiful city, enjoying the hospitality of the people from Santa Fe and New Mexico, generally.

One of us is from California, and one of us is from Illinois. We had Mr. Sensenbrenner, from Wisconsin, this morning, who had to leave to go and cast a vote. He tells me again he is against the President on MX, so we will see what the newspapers say on Wednesday.

We are considering, of course, H.R. 700, which is called the Civil Rights Restoration Act of 1985. It is very important legislation because we have drafted it to reverse the Supreme Court decision in the *Grove City* case. We intend to have two more hearings in Washington this week, and in April or May we will bring it before the full House of Representatives.

We had a marvelous hearing this morning. The Governor of your great State testified, the mayor gave us his feelings, and the very talented and able Congressman from this area, Bill Richardson, also made a statement.

The afternoon session will begin now. And I regret to say that because we have to catch airplanes rather early this afternoon, we are going to have to leave about 2, because again we have the MX vote tomorrow. The panel, the members of which will testify this afternoon, I will just introduce them one after the other.

We welcome you, the members of the panel. The first member of the panel to testify is Rosemarie Espinosa, representing the Albuquerque public schools.

STATEMENT OF ROSEMARIE Z. ESPINOSA, ALBUQUERQUE PUBLIC SCHOOLS; HAL VISICK, BRIGHAM YOUNG UNIVERSITY; PRESTON OADE, MOUNTAIN STATES LEGAL FOUNDATION; CLAUDEEN ARTHUR, ATTORNEY GENERAL, NAVAJO NATION; AND RUTH LUCHASSON, UNIVERSITY OF NEW MEXICO

Ms. ESPINOSA. Mr. Chairman, members of the committee, I am privileged to be here today to speak regarding the Civil Rights Restoration Act of 1985, House Resolution 700. I am particularly pleased that you chose Santa Fe as one of the cities where you would hold hearings. So often New Mexico is relegated to another country, and we are happy that you know that we are here. I believe that House Resolution 700 is the only bill that will fully restore the civil rights laws of 1964.

I am the title IX coordinator for the Albuquerque public schools, a position that was created 6 years ago. My position was an innovative and significant affirmative action step taken by our school district. About the same time, the public schools affirmative action office generated a staffing plan aimed at ethnic balance, also a statement of affirmative action for the handicapped, and finally a policy prohibiting sexual harassment throughout the district. None of these steps was taken under court order. The district was voluntarily responding to the climate of the times.

In those days there existed here and in other localities a sensitivity to the rights and privileges of all people. Certainly the impetus provided by Federal and State laws to do what was right cannot be minimized. To be sure, this view was not shared universally by every administrator to employee in our own district. However, the local school board, backed by the legal arm of the law, could comfortably adopt an affirmative stance in these matters.

On our school board at that time, three of the five members were female. The school board's advocacy for females and minorities has remained steadfast, despite the national posture of the past 4 years. However, without legal sanctions and with a continuing shift of officials, much could change. We cannot guarantee future options and opportunities for females and minorities based on a short season of advocacy.

During the 1970's, title IX was primarily identified with sports. Clearly, the coverage was much broader than sports, but physical education was an obvious and visible area which attracted attention. Just 6 years ago it was difficult, if not impossible, to convince physical education teachers, that there was anything to be gained for either girls or boys from integrated classes. The task is still unfinished.

However, more and more students, teachers and parents recognize that the competition experienced in these classes is often parallel to the competition men and women experience in the workplace. They also recognize that there are opportunities in these classes for learned negotiation, teamwork, and leadership.

We are making strides toward the teaching of physical skills to all students which were once considered natural abilities. That is, you either had them or you didn't. They were not to be taught or learned. As a result, many girls and some less athletically inclined boys never experienced the self-confidence and the fun which resulted from participation in sports.

There are other advantages to female participation in sports programs. Scholarships have provided college educations which would otherwise not have happened. Opportunities for engaging in lifetime sports have expanded our notions of healthful activities beyond gender boundaries. Will women forego sports which may enhance the quality of their lives because they were not taught skills and were made to feel like klutzes in their physical education classes?

Lest I give the impression that we in our district have overcome the inequities in athletics and physical education and, consequently, have no more need for legal recourse, let me say that many traditions are so engrained in the old guard—coaches who have been around for years, both male and female—that it will take monitoring and training to turn the situation completely around, even as their replacements, enlightened though they may be, fill the coaching positions.

In some of our schools, the boys are still given preference in playing on the good floor in the good gym. Despite the achievements of New Mexico's Nancy Lopez, there is money at one school for smart gold uniforms for boys, while the girls on the team are identified by a T-shirt.

Nowhere is tradition more rigged than in the area of vocational education. One of our high school shop teachers was convinced that the problems in his woodworking class resulted directly from allowing girls to enroll. Despite a consensus among his colleagues that his discipline problems were rooted elsewhere, he systematically made sure that girls did not remain long in his class. He is no longer in the classroom, but he is only one of many who are resistant to changes which provide valuable options to students.

Despite the technological world we live in, students still need to be encouraged and protected in their pursuit of math and science. Our classes in the high schools still reflect only scattered enrollments of girls in advanced math.

For instance, in the fall of 1983-84, more girls than boys enrolled in geometry and algebra. However, more boys than girls enrolled in computer science courses, algebra II honors, geometry honors and calculus honors. The kind of resistance to equitable practice in our schools is not confined to the classroom.

Let me shift gears and recount an experience I had with a female custodian. Under title IX, we have an obligation to provide employment opportunities without discrimination. Custodial jobs have traditionally been filled by males. In one of our building units, a female custodian who had rebuffed the alleged sexual advances of her immediate supervisor, the male head custodian, and who had also refused to stretch her tasks to encompass those she didn't relish, was so relentlessly harassed by him that ultimately she transferred to another unit, rather than file a grievance.

This is an all too familiar example of moving or punishing the victim. However, consider the following circumstances. Although 95 percent of those employees in the building whom I interviewed, attested to her competence and superior work, they would not formally testify in her behalf, for fear of reprisal.

Fear linked to protecting jobs or to securing advancement is evident at other levels of employment. To illustrate this, I can tell you that just 6 years ago the women in our district in administrative positions took a very brave step when they openly attended a weekend retreat together to hone their administrative skills and to establish support systems. There were many more women who had been invited but who, understandably, were not prepared to risk that meeting.

Today I can jubilantly recount that we have really made advances in our networking, that support for our formal meetings is not limited just to women, but that some male administrators also understand we are only doing what they have done for hundreds of years filling in gaps for mentoring, which we hardly knew existed 10 years ago.

With a female superintendent-designate, Albuquerque public schools is entering a new era which we fully expect will reinforce the climate for equity. However, today superintendent reigns are short. Ten years hence, will our gains only be a memory, a summer's respite from the winter's struggle for survival? We cannot let this happen.

In title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973 and in the Age Discrimination Act of 1975, we already have the best efforts of the best minds. The Civil Rights Restoration Act of 1985 will secure that these efforts have not been in vain. Thank you.

[The statement of Rosemarie Z. Espinosa follows:]

PREPARED STATEMENT OF ROSEMARIE Z. ESPINOSA, ALBUQUERQUE PUBLIC SCHOOLS

Mr. Chairman, members of the committee, I am privileged to be here today to speak regarding The Civil Rights Restoration Act of 1985, Bill HR #700. I believe it is the only bill which will fully restore the Civil Rights Laws of 1964. I am the Title IX Coordinator for the Albuquerque Public Schools; a position which was created six years ago. It was an innovative and significant affirmative action step taken by our school district. About the same time the public schools Affirmative Action Office generated a staffing plan aimed at ethnic balance; also a statement of affirmative action for the handicapped; and finally a policy prohibiting sexual harassment throughout the district. None of these steps was taken under court order. The district was voluntarily responding to the climate of the times.

In those days there existed here, and in other localities, a sensitivity to the rights and privileges of all peoples. Certainly the impetus provided by federal and state laws to do what was right cannot be minimized. To be sure, this view was not shared universally by every administrator or employee in our own district. However, the local school board, backed by the legal arm of the law, could comfortably adopt an affirmative stance in these matters. On our school board, at that time, three of the five members were female. The school boards' advocacy for females and minorities has remained steadfast despite the national posture of the past four years. However, withiut legal sanctions and with a continuing shift of officials, much could change; we cannot guarantee future options and opportunities for females and minorities based on a short season of advocacy.

During the 1970's, Title IX was primarily identified with sports. The law stated that "no person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. . . ." Clearly the coverage was much broader than sports. But physical education was an obvious and visible area which attracted attention. Just six years ago, it was difficult, if not impossible, to convince physical education teachers that there was anything to be gained for either girls or boys from integrated classes. That task is still unfinished; however, more and more students, teachers, and parents recognize that the competition experienced in these classes is often paralled to the competition men and women experience in the workplace. They also recognize that there are opportunities in these classes for learned negotiation, team work and leadership. We are making strides toward the teaching of physical skills to all students which were once considered "natural abilities." That is, you either had them or you didn't (not to be taught or learned). As a result, many girls and some less athletically inclined boys never experienced the self-confidence and the fun which resulted from participation in sports. There are other advantages to female participation in sports programs. Scholarships have provided college educations which would otherwise not have happened. Opportunities for engaging in life-time sports have expanded our notions of healthful activities beyond gender bounderies. Will women forego sports which may enhance the quality of their lives because they were not taught skills and were made to feel like klutzs in their physical education classes?

Lest I give the impression that we, in our district, have overcome the inequities in athletics and physical education and consequently have no more need for legal recourse, let me say that many traditions are so engrained in the old guard—coaches who have been around for years, both male and female—that it will take monitoring and training to turn the situation completely around, even as their replacements, enlightened though they may be, fill the coaching positions. In some of our schools, the boys are still given preference in playing on the "good floor in the good gym." Despite the achievements of New Mexico's Nancy Lopez, there is money at one school for smart golf uniforms for boys, while the girls on the teams are identified by a T-shirt.

No where is tradition more rigid than in the area of Vocational Education. One of our high shcool shop teachers was convinced that the problems in his woodworking classes resulted directly from allowing girls to enroll. Despite consensus among his colleagues that his discipline problems were rooted elsewhere, he systematically made sure that girls did not remain long in his classes. He is no longer in the classroom, but he is only one of many who are resistant to changes which provide valuable options to students.

Despite the technological world we live in, students still need to be encouraged and protected in their pursuit of math and science. Our classes, in the high schools, still reflect only scattered enrollments of girls in advanced math. For instance, in the fall of 1983–84, more girls than boys enrolled in geometry and algebra. However, more boys than girls enrolled in computer science courses, algebra II honors, geometry honors and calculus honors.

The kind of resistance to equitable practice in our schools is not confined to the classroom. Let me shift gears and recount an experience I had with a female custodian. Under Title IX we have an obligation to provide employment opportunities without discrimination. Custodial jobs have traditionally been filled by males. In one of our building units, a female custodian who had rebuffed the alleged sexual advances of her immediate supervisor, the male head custodian, and who had also refused to stretch her tasks to encompass those he didn't relish, was so relentlessly harassed by him that ultimately she transferred to another unit rather than file a grievance. This is all too familiar example of moving or punishing the victim. However, consider the following circumstance: although 95% of those employees in the building whom I interviewed attested to her competence and superior work, they would not formally testify in her behalf, for fear of reprisal.

Fear linked to protecting jobs or to securing advancement is evident at other levels of employment. To illustrate this, I can tell you that just six years ago, women in our district, in administrative positions, took a very brave step when they openly attended a weekend retreat together to hone their administrative skills and establish support systems. There were many more women who had been invited, but who, understandably, were not prepared to risk the meeting. Today, I can jubilantly recount that we have really made advances in our networking, that support for our formal meetings is not limited just to women, but that some male administrators also understand we are only doing what they have done for hundreds of years, and filling the gaps for mentoring which we hardly knew existed ten years ago.

With a female superintendent-designate, Albuquerque Public Schools is entering a new era which we fully expect will reinforce the climate for equity. However, superintendent reigns are historically short. Ten years hence, will our gains only be a memory . . . a summer's respite from the winter's struggle for survival? We cannot let this happen. In Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and in the Age Discrimination Act of 1975 we already have the best efforts of the best minds. The Civil Rights Restoration Act of 1985 will secure that these efforts have not been in vain.

Mr. **Edwards**. Thank you. That was very helpful testimony, which really got to the heart of the matter.

We are going to interrupt the panel for a few minutes, at the request of Congressman Richardson, and hear from Steven G. Farber, who is an attorney here in Santa Fe who specializes in criminal law. Mr. Farber, you are recognized.

STATEMENT OF STEVEN G. FARBER, ATTORNEY

Mr. **Farber**. Mr. Chairman, members of the committee, thank you very much. I appreciate Congressman Richardson allowing me the opportunity to be heard.

My practice of law involves a substantial amount of civil rights litigation. In fact, in January of this year I argued a case in front of the U.S. Supreme Court, a civil rights case.

I want to commend the efforts of this committee to further the enactment of this legislation. I think that there is a much broader problem, however, and I would just like to share that with you.

I think that those of us who do civil rights litigation on behalf of people who have been abused by the Government and governmental authority are finding increasingly that the courts are closed to the vindication of the civil rights of the people.

The courts are closed both at the district court level and also at the State court level because I believe that the courts have not been sensitive to the dictates and the commands of the Congress that guarantees the rights of citizens, the equality for citizens and the fundamental due process rights of citizens. And we see this ever increasing on a daily basis, where the most narrow of interpretations of congressional mandates are developed by the courts.

I would like to encourage the members of this committee to be ever vigilant as you continue your process of developing legislation to guarantee equality for all citizens to make sure that there is an effective remedy for the citizens whose rights you are giving.

We have certain basic rights which were developed back at the time of the enactment of the Bill of Rights. We have the Civil Rights Act of 1866, which developed the right of equality for all citizens. We have the further development in 1871 of the cause of action, which is now known as section 1983, which allows citizens to go into court to seek the vindication of the deprivation of their Federal rights.

And at the same time, we are now finding it ever increasingly difficult to be able to get into court to prove the violations. It is not difficult on a substantive case to get a jury verdict which vindicates the rights of citizens. It is unfortunate that we even have to go to court, because what we would like to hope is that the States run their procedures and that the local governmental authorities run their procedures and that the Federal Government runs its procedures in such a way that people's rights are not abused.

But oftentimes people's rights are abused. And under our system of law, the only way we have of vindicating the deprivation of the rights of individuals is through the remedy of a lawsuit.

It has become increasingly difficult to just get into court because of what appears to be a trend to not recognize the fundamental nature of the giving of the right of equality to the people of this country by the Congress as far back as 1866.

I had the opportunity, when I was preparing for the Supreme Court case, to read the legislative debaters which led to the enactment of the Civil Rights Acts of 1866 and 1871, and it gave me a renewed sense of concern about what I see developing across this country.

So I encourage you, as you are vigilant in giving the people their rights, that there be an ever effective remedy for the vindication of the rights. It is very, very difficult for an individual civil rights litigant, a plaintiff whose rights have been abused by governmental authority, to get the amount of money, the resources which are necessary to prosecute these types of cases.

We are confronted generally with people who don't have money, who have been abused, who are met with the fiercest of opposition by governmental authorities in defending a case. We are met with court decisions which don't even allow the individual the opportunity to attempt to prove their case.

I am currently involved now in a case from Los Alamos National Laboratories of an individual who is a one-eyed individual who sought a job as a security inspector. It has been maintained that this person was otherwise qualified and would be a very good applicant. But because of a DOE regulation which does not allow one-eyed individuals to be security inspectors, this person was not even considered for the job.

We have been fighting that case for a year and a half to attempt to even get to court and have not yet been successful because of resistance on the part of the Government, basically, Los Alamos National Laboratories, and the State of California, which runs the labs, by saying that there is not Federal financial assistance because what they did was they subcontracted with a private security force to maintain security at this national laboratory, which does develop nuclear weapons and things of that sort.

The fact is that all of the money, though, flows from the Federal Government down through a tier, a procedural tier. And yet they are saying there is no Federal financial assistance, which is in my judgment just simply ludicrous. This is just one of the examples.

Another example is that there is an attack—and I find is somewhat ironic——

Mr. **Edwards**. We will have to move along. Mr. Farber.

Mr. **Farber**. I would just like to end and say that I think it is very important that there can be a right to vindication. Thank you.

Mr. **Edwards**. Thank you very much, Mr. Farber. That is something that the Committee on Civil and Constitutional Rights will remember, and we would like to hear from you more in Washington.

The next member of the panel to testify will be the vice president and general counsel at Brigham Young University in Provo, UT, Mr. Hal Visick. We welcome you.

Mr. **Visick**. I have a few remarks which are in a somewhat different vein, and I hope they will be appreciated for what they are, because neither Brigham Young University, myself nor our sponsoring church is interested in any way in assisting persons who want to discriminate on any basis that is not proscribed by statute. In fact, we are absolutely determined to eradicate any discrimination, either on our campus or elsewhere, and to remedy any effects of such discrimination.

However, we have some reservations about the bill itself, how it is drafted and what it is designed to do. I think that the bill is based on a false premise and that that is a basic flaw in the bill.

There seems to be some idea that this bill will be restoring a lost status quo. Now I have been active throughout the country in the National Association of College and University Attorneys and elsewhere. We have had many discussions among ourselves, and I have found scarcely any attorneys who, prior to the *Grove City* decision, did not believe that title IX and the other acts which are included in H.R. 700 was not program specific.

In other words, we believed that it did not apply to entire institutions, but only to certain areas which were receiving Federal financial assistance, but that did not influence our decisions as to how to design our programs for our campuses.

What we were trying to do was do right. And so whether a program was really covered by title IX or not was not important to us. And when we designed our programs and the progress which has been mentioned by Ms. Espinosa here, we designed them to try to be fair, to try to eradicate discrimination, to try to let merit prevail and to try to assist the disadvantaged minorities and women in acquiring better positions on our campuses.

Only a very few attorneys that I have met thought that title IX was not program specific, and almost all of those would be included in the civil rights advocate area of people who were determined to take every statute to the farthest length of interpretation possible in the support of civil rights, and I can't fault that motive.

But I believe that Congress is perfectly capable of expressing itself accurately and that the men and women who make up the Congress are as good at using language as anyone else is. And therefore, when title IX appears to say that it applies only to programs which are receiving Federal financial assistance, I assume that is what it means; not college, but programs.

Now it may be that the time has come when we ought to move on beyond that. The time may have come when we want to move to institutionwide coverage. But if we are going to do that, let's not do it under the false idea that we are going to restore something that existed. Let's pass some legislation, let's have the Congress draft some legislation that is aimed specifically at that problem and that is based on a finding that the present title IX, title VI, and other areas are not adequate.

I have not seen anybody at any college or university throughout the United States who, following the *Grove City* decision, has decided to try to pull back from their commitment to equal opportunities and equal rights. That hasn't happened, and I don't think it is going to happen.

I think that if the Education Department or the Justice Department will get out and apply title IX and title VI as they have in the past, that any existing problems will be successfully overcome.

But if we take this H.R. 700 and pass that statute, it is not just an attempt to make the civil rights laws apply institution-wide, as one would think, in trying to overcome the *Grove City* decision. It has a lot of extra baggage on it. It changes wording and creates ambiguities which we do not know the meaning of.

It will create another layer of regulations which, although intended to help, will stifle some innovation and some opportunities for variety that has made up a lot of higher education. It may interfere with colleges that are teaching religion. It may interfere with colleges who, by trying to avoid receiving Federal assistance, have wanted to go their own way, such as Grove City, which has an unblemished reputation in terms of antidiscrimination, women's rights and so on, but it wants to go its own way.

And as far as I know, and I have spent some time with the Grove City people, they have no intention of discriminating against anyone.

That is what my message is. If Congress wants to pass further civil rights legislation, let us find where the civil rights laws are not being enforced and where they are inadequate, and then let's design legislation for that purpose.

But let's not, in a panic reaction to the *Grove City* decision, rush out and pass legislation without some evidence that this legislation is necessary or even desirable. Let's see if people have pulled back from their enforcement attitudes and from their desires to teach equality throughout the United States. If they have not, then maybe title IX is adequate and title VI, and maybe we ought to look to some other area of strengthening enforcement where perhaps discrimination is more rampant.

That is the gist of all I have to say, and I thank you very much.

[The prepared statement of Hal Visick follows:]

PREPARED STATEMENT OF H. HAL VISICK ON BEHALF OF JEFFREY R. HOLLAND, PRESIDENT, BRIGHAM YOUNG UNIVERSITY

I. INTRODUCTION

Mr. Chairman and members of the Commission, I am President of Brigham Young University (BYU), a private a college in Provo, Utah with a full-time enrollment of more than 26,000 students. BYU employs approximately 2,000 full-time faculty members and 6,000 other full-time employees. BYU is sponsored by The Church of Jesus Christ of Latter-day Saints, more commonly known as the "Mormon" Church. The University's enrollment comes from every state in the United States and from many foreign countries. BYU operates ten colleges, a graduate school and schools of law and business management. It is accredited by eighteen accrediting associations and is affiliated with 103 educational associations covering the various fields of study offered at BYU.

Students of all racial, ethnic and religious groups, as well as members of both sexes and handicapped persons are encouraged to enroll at BYU. The only restrictions on enrollment are that the candidates must meet academic entrance standards and agree to abide by the BYU code of honor, which sets very high standards of moral and ethical behavior and requires compliance with minimum standards of dress and grooming.

From its beginnings, Brigham Young University has enunciated policies to encourage the education of women and racial, ethnic and religious minorities. The University's sponsoring church was among the first to accord status to women and to work for the granting to women of voting and other civil rights. Brigham Young University's motto, "The glory of God is intelligence," was chosen to exemplify the deeply held belief that all men and women have the responsibility, and should be given the opportunity, to reach the highest levels of achievement.

My testimony will not duplicate that of the many other college presidents and others appearing before the committee who have raised questions concerning the desireability and wisdom of HR-700 and S272 in their present form. It is not my intention to recite to the committee either the legislative history of Title IX and the companion civil rights statutes identified in HR-700, nor the cases which have construed them. I will, however, attach items which express positions with which Brigham Young University and its legal counsel are in full agreement. My purpose in sending Hal Visick, BYU's Assistant to the President and General Counsel, to present this testimony is to review for the committee some of the philosophical underpinnings of civil rights legislation as it applies to colleges and universities, and to provide some analysis of the necessity or wisdom of taking so radical a step as the proposed legislation.

When the Title IX regulations were first published by the then Department of Health, Education and Welfare, HEW advanced as a basis for regulation the rather dubious proposition that the program-specific language of Title IX did not mean what it appeared to say. As the committe is well aware, 20 U.S.C. § 1681, which embodies the operative language of Title IX, says in pertinent part,

> "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance . . ."

Flying in the face of this rather clear language, the Department of Health, Education and Welfare announced that the statute applied to all programs, or activities of any educational institution any portion of which receives federal financial assistance. Thus the statute was not, as it appeared to be, program-specific. Indeed the receipt of one dollar in fees from a veteran enrolled at a college would subject the entire institution to regulation.

Brigham Young University was advised by its corporate counsel and its Washington counsel that the Title IX regulations exceeded the scope of Title IX and were invalid, except to the extent that they applied to particular programs or activities receiving federal financial assistance. A thorough discussion of the question of the scope of Title IX is attached at Exhibit A, which is a portion of a memorandum prepared by Mark R. Dissler, General Counsel of the United States Commission on civil rights, discussing HR-700 and S-272. The part exerpted discusses the question of the intended reach of Title IX as originally enacted. I think you will agree that this memorandum is persuasive of the proposition, that Congress intended to regulate only programs and activities which were receiving federal financial assistance and not entire institutions.

Acting upon the advice he had received from his attorneys, Dallin H. Oaks, then President of Brigham Young University, and himself a well-known legal scholar, published an announcement (as required by the Title IX regulations) that Brigham Young University considered itself to be bound by the Title IX regulations only to the extent that specific programs or activities of the University were receiving federal financial assistance. Nevertheless, President Oaks stated that, pursuant to its policy of equal treatment of the sexes, Brigham Young University would voluntarily comply with all of the Title IX regulations, except six which conflicted with Brigham Young University's moral and religious teachings.

An exemption from compliance with the six items was claimed by the University under subsection 3 of Title IX,

> "This section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization."

The Department of Health, Education and Welfare, after meeting with Brigham Young University, acknowledged that, based on its religious beliefs, the University was entitled to exemption from compliance with the items designated (which had to do with sexual morality and separate housing and facilities for the sexes, such as gymnasium dressing rooms, restrooms, etc.). BYU had provided HEW with extensive briefs setting forth its point of view concerning the scope of Title IX, but since BYU was agreeing voluntarily to comply, no legal test of the correctness of either HEW's or BYU's position was undertaken.

II. TITLE IX IS PROGRAM-SPECIFIC.

I have received many opinions from attorneys and others that, as the Supreme Court held in the Grove City case, Title IX is program-specific. I have formed my own opinion on this subject which is based upon the following:

1) Congress consists of men and women of intelligence and ability who are fully capable of expressing themselves accurately in drafting legislation. A strained interpretation of Title IX would do violence to the notion that Congress is capable of saying what it means. If Congress had wished to say in Title IX, "There shall be no [discrimination] in any institution which receives federal financial assistance," it certainly could have done so. Having expressed itself clearly that it was barring discrimination in any "program or activity" receiving federal financial assistance, rather than any "institution", Congress appears deliberately to have chosen to limit the applicability of Title IX in the way the language suggests;

2) When Title IX was originally drafted (see appendix A) Congress rejected language which would have applied its proscriptions institution wide;

3) As part of the same legislative package, Congress enacted Section 904 of Title IX, stating that: "no person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of federal financial assistance for any education program or activity," (emphasis added). Since Section 904 was part of the same act as Section 901 discussed above, it is clear that Congress could have included in § 901 language applicable to an entire institution as it did in Section 904. Its failure to make Section 901 track with Section 904 indicates a clear purpose of Congress to treat sex discrimination differently than discrimination on the basis of blindness;

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4) The great majority of cases which have dealt with Title IX prior to Grove City, extending over a period of about 12 years, interpreted the language of Title IX and other similar civil rights titles to be program- specific. Thus it should not have been a shock to the civil rights community when the Supreme Court adopted this majority view.

III. THE EXPANSION OF CIVIL RIGHTS WILL CONTINUE WHETHER OR NOT ANTI-GROVE CITY LEGISLATION PASSES.

Title IX was a manifestation and not a cause of the movement to improve and solidify women's educational rights. The overwhelming majority of attorneys and legal scholars whom Brigham Young University consulted following the publication of Title IX regulations indicated that they interpreted Title IX to be program-specific—that Congress was attempting to prevent discrimination in specific educational programs or activities receiving federal financial assistance. They also maintained that Congress did not intend to regulate programs or activities which received no assistance.

There was a subdispute, on which opinions were about equally divided, as to whether federal financial assistance included payments to students who enrolled at the institution. However, most agreed that if it did, such application would be limited to college enrollment and financial aid departments since these were the activities receiving assistance. About the only attorneys we were able to locate who had a contrary view were those who drafted the Title IX regulations for the Department of Health, Education and Welfare, and certian self-styled "civil rights advocates", many of whom seemed to be supporting civil rights programs as oppressive as the practices they were trying to abolish.

Despite the fact that the majority of the colleges were, I believe, advised by their attorneys that Title IX was program-specific, I know of no college or university which restricted its equal opportunity programs solely to areas receiving federal assistance. I attribute this willingness to comply with Title IX and to go beyond it, not to the compulsion of the statute, but to the fact that the justice of the cause of women had been made self evident to college and university administrations. These administrators were determined (as they have historically been) to implement programs which would result in equality for women and remedy any past discrimination.

It has been repeatedly said, with doubtful accuracy, that you cannot legislate morality. I believe a law not based on moral principles cannot be effective in governing human behavior. However, what people mean when they say that you cannot legislate morality is that law cannot swim against the tide of public opinion. Thus, even though it may seem morally desireable to enact a particular statute, if the mass of the public is not ready to accept regulation in that area, the statute will prove ineffective because it will be unenforceable.

Certain elements of the womens' rights movement seem to have the notion that by causing Title IX to be enacted they are solely responsible for the recent enhancement of womens' rights on the campuses of U.S. colleges and universities. I do not accept this characterizaiton. I believe that college and university administrators have a great desire to deal justly with their students, faculty and other employees. As soon as injustices were identified (many of which were based upon choices of earlier generations of women, which choices are not now relevant to today's society) the college administrations hastened to eradicate the effects of such discrimination. Because these programs were based on notions of fair play and substantial justice, not compulsion by law, such programs have continued unabated after the Supreme Court's decision in the Grove City case. No one was awaiting a relaxation in the law so as to reimpose discriminatory policies.

Some of the more radical advocates of womens' rights panicked following the Grove City decision because they imagined that the improvement of womens' rights which has occurred on the campuses of American institutions was compelled by statute.

Thus, according to their reasoning, once Title IX was held by the Supreme Court to be program- specific, all the institutions who had been forced to revise their programs so as to treat women fairly would immediately revert to discrimination and in all unregulated programs.

This view overestimates the force which a statute may have. It is only because the American public has perceived the justice of the civil rights cause and embraced its ideals that civil rights progress could be made or legislation passed to permit redress for discrimanatory treatment of minorities. The principal effect of Title IX and the regulations was not so much to compel universities to treat women fairly (this was already under way) as to provide redress for those relatively rare occasions where unfair programs or policies had existed.

This is the proper scope of regulatory law. Regulations cannot stand against the tide of national opinion any more than King Canute could command the tides of the sea. However, statutes which are supported by a resevoir of favorable public opinion can be very useful in providing assistance to those who are denied rights which are generally considered by the public to exist.

Congress ought not to place itself in the position of limiting or eliminating the freedoms of individuals whom they are attempting to protect or assist. The Title IX regulations are a good example of what may occur when the regulatory mechanism is captured by those who wish to force into a given mold all those whom they deem themselves to be protecting. For example, it is desirable and just that women be allowed to choose the fields in which they will be educated and the careers for which they will prepare. Thus, if a woman wishes to be a mathematician, she ought to have the same opportunities to do so which any man might have, provided her talents suit her purpose. The law ought to assist women who are denied access to programs open to men.

However, women should not be compelled to study mathematics. If, after opportunities are made sufficiently available at precollege and college levels, it develops that the enrollment of women in mathematics is less than that of men, this should be accepted as the free choice of women. Those who are running the regulatory apparatus ought not to be able to compel entry of women into mathematical programs, nor should they be permitted to use their power to circulate the idea that women by exercising their free choice have somehow betrayed their sisters by not studying subjects traditionally favored by men. It is one thing to say that women must have the opportunity to study in a given field, it's quite another to require them to do so.

IV. SPECIFIC PROBLEMS WITH HR-700.

HR-700 has several defects in its drafting which will cause uncertainty concerning both its meaning and scope. Most of these defects are based upon the erroneous assumption that prior to the Grove City decision both the regulatory agencies and those who are regulated assumed that Title IX was institutional in scope and not program-specific. In my previous discussion (Section II. A.) I have pointed out the reasons why an unbiased reader of Title IX should come to the conclusion that it was program-specific when enacted. Thus a statute like HR-700, which recites that it is restoring the status quo prior to Grove City, is bound to cause a great deal of difficulty. Prior to Grove City, the status quo was not what the drafters of HR-700 assume it to have been.

Before Grove City, there a wide variety of opinions as to the scope of Title IX, even within the federal regulatory agencies. Surely Congress ought to give more specific and less ambiguous guidance to both the Government and the regulated institutions than to direct a return to a status about which there is so much uncertainty. I said in Section II. that I believed that Congress was capable of saying what it means. To put a strained interpretation on plain statutory language so as to give it a meaning opposite to what it appears to mean shows little respect for the abilities and intelligence of the congressional drafters of Title IX. Keeping that in mind I believe that if Congress will use its skills in drafting legislation concerning civil rights, it will be able to come up with a bill which is far more useful and more easily interpreted than HR-700.

If, in the judgment of Congress, the time has come to remove the program-specific language from Title IX and other civil rights legislation and to substitute therefor institution-wide prohibitions, Congress ought to say so. For example, Title IX's present language,

> "no person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance",

might be modified to read,

> "no person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any education program or activity conducted at any institution receiving federal financial assistance".

A definition of "federal financial" assistance then might be appended to this statute stating that federal financial assistance includes not only direct assistance to any portion of the institution, but also the enrollment of any student who receives federal financial assistance under any federal student assistance program.

This would make it plain that Congress intended to regulate every institution which directly or indirectly receives federal funding, even if the funding passes through other hands before arriving at the institution. I suppose one may still question the desireability of the federal government interfering in programs which it does not assist, but at least the meaning would be clear.

Others have adequately covered the attempt in HR-700 to broaden civil rights coverage beyond education programs, see e.g. the testimony of Bruce R. Hafen, President of the American Association of Presidents of Independent Colleges and Universities, to be submitted to the Committee at its Washington hearings.

V. CONGRESS SHOULD NOT IMPOSE REGULATION WHICH DESTROYS OR TENDS TO LIMIT THE DIVERSITY OF THE AMERICAN EDUCATIONAL SYSTEM.

In its rush to insure justice for sexual, racial, handicapped and other minorities, Congress ought to be sure that it is not destroying other important pieces of the fabric of

American society which have contributed greatly to the quality of American life and law. As the committee in its wisdom fashions final versions of any proposed civil rights law, I would encourage it to give consideration to the desireability of protecting the historic diversity among the various colleges and universities of the United States. We have a vast spectrum of institutions ranging from state sponsored institutions to the large ivy league private institutions, to the small liberal arts colleges and to colleges sponsored by various religions. Each has a somewhat different point of view concerning the importance of various aspects of education. Each has contributed to American society by providing people who are educated to differing levels in differing areas and are capable of contributing in different ways to society. Tolerance for different institutions also requires tolerance for differing ideas. I believe that the richness of diverse ideas and institutions is a part of the genius of America. I hope that Congress will strengthen the religious exemption and include other safeguards against over-regulation which might force abandonment of this rich diversity.

It seems to me that American society can tolerate differing ideas as to what the proper roles of women may be and differing educational programs from which women may select.

An example of what I mean might be the apparent embodiment in the Title IX regulations of the idea that freedom for women means to make them duplicates of men. For example, Title IX provides that women's athletics must duplicate men's athletics in scope and funding. This can be achieved, but not without considerable sacrifice. It may be that on a given campus women would prefer to see the high level expenditure required by the regulations invested in other programs of greater interest to more women. Intercollegiate athletics, by its very nature is exclusive and omits the vast majority of students from participation. If women students should feel that they would prefer to have programs other than athletics enhanced beyond the level available to men and to have funds applied toward that end, why should the government interfere with such a free choice?

Treating women in every way like men is almost certain to produce dissatisfaction and interfere with the ambitions and aspirations of women. One need not travel far to realize that modern women are now permitted to drink, swear and be sexually promiscuous like men. One wonders, however, how wise women may be to demonstrate equality by adopting masculine vices. Equal opportunity for women does not necessarily mean compelling women to take the same subjects, engage in the same athletics or enter the same careers as men. It may be that women in their wisdom may achieve at higher levels than men in fields of their own choosing. It may also be that creative women may invent improvements to traditionally male careers and academic subjects which far exceed acheivements of men. Women may even want to aspire to greater things than mere business success. Law should not prevent this.

It may even be possible that tolerance of diversity in the American educational system may permit room for institutions which teach, as C. S. Lewis once remarked, that, "Homemaking is the profession to which all other professions are subservient." Should this occur and women voluntarily study such ideas, no one should be offended. It is only when compulsion is imposed or opportunities denied through discrimination that the government should interfere.

I plead with the Congress to rise above the rather limited and, to my way of thinking, not terribly important dispute as to the correctness and applicability of the Grove City decision by the Supreme Court. Congress should study the entire question of civil rights with a view to eradicate the vestiges of discrimination and injustice which may still exist. Congress should also encourage the full flowering of talent and ability wherever present, so that neither the advocates of prejudice nor the protectors of civil rights may define for an individual, a race, a sex or any other traditionally disadvantaged group what their aspirations might be or to what level their achievements may reach.

Let us do everything within our power to see that the rising generation uses objective and not prejudicial standards in evaluating individuals and affording opportunities. But, let us try to accomplish this, wherever possible, without compulsory means.

Appendix A

UNITED STATES
COMMISSION ON
CIVIL RIGHTS

1121 Vermont Avenue N W
Washington, D C 20425

DATE: February 4, 1985

REPLY TO ATTN OF: OGC

SUBJECT: H.R. 700; S.272 (bills dealing with *Grove City*)

TO: Linda Chavez
Staff Director

I attach herewith a memorandum concerning two bills aimed at the *Grove City College* v. *Bell* decision.

MARK R. DISLER
General Counsel

I. Introduction

Legislation has been introduced in Congress to amend Title VI of the Civil Rights Act of 1964 (forbidding discrimination on the basis of race, color or national origin in federally-assisted programs or activities), Title IX of the Education Amendments of 1972 (forbidding sex discrimination in federally-assisted education programs or activities), Section 504 of the Rehabilitation Act of 1973 (forbidding discrimination against qualified handicapped persons on the basis of handicap in federally-assisted programs or activities) and the Age Discrimination Act of 1975 (forbidding discrimination on the basis of age in federally-assisted programs or activities) (ADA).

A. Grove City v. Bell Decision

The Grove City College v. Bell decision is described in my memorandum, sent to the commissioners in March, 1984 (Attachment A). The Supreme Court's opinion is also attached hereto (Attachment B). In my opinion, while the decision addresses the coverage of an institution of higher education under Title IX, Grove City's rulings also affect interpretation of the three other civil rights statutes and coverage of entities other than institutions of higher education as well. See Consolidated Rail Corp. v. Darrone, 104 S.Ct. 1248, 1255 (1984).

B. Background*

Although my memorandum of July 11, 1984, refers to a line of lower court decisions which interpreted the "program or activity" language of these four civil rights statutes in a program-specific manner, 1/ circumstances did not permit a further explication of the argument that Congress intended these civil rights statutes to be program-specific when they enacted them. I wish to draw further attention to this argument because it is a substantial one.

Title VI is divided into several sections. Section 601 states: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 2/

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*While working in the Office of General Counsel in the Department of Education and as Special Counsel in the Civil Rights Division dealing with regulatory matters, I had occasion to research the scope of coverage issue under these statutes. In addition, I had access to agency administrative files as well as the benefit of conversation with certain long-time career civil servants in the Department of Education (formerly HEW) and the Department of Justice. I also consulted with them during the past year following the introduction of the Civil Rights Act of 1984.

1/ I drew attention to this line of cases in commenting that the House Committee Reports on the Civil Rights Act of 1984 only cited a line of cases which interpreted the statutes more broadly.

2/ 42 U.S.C. §2000d (1982).

Section 602 states that a federal agency may terminate federal aid as a remedy for discrimination "but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom . . . a finding [of discrimination] has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found. . . ." 3/

The termination-of-federal-aid clause is often referred to as the "pinpoint" termination clause.

Title IX is written in a parallel fashion, as is the ADA. Section 504 incorporates Title VI's remedial procedures. In short, the substantive scope of each statute is defined by the "program or activity" language in their operative bans on discrimination. The scope of the fund termination remedy is delimited by the "particular program, or part thereof" language in the remedy clause. 4/

While responsible people can disagree about Congress's intent when it enacted Title VI and Title IX, in my opinion, a review of the relevant legislative history yields a very strong case that Congress intended coverage under these statutes to be

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3/ 42 U.S.C. §2000d-1 (1982) (emphasis supplied)

4/ These statutes also permit compliance "by any other means authorized by law. . . ." E.g., 42 U.S.C. §2000d-1 (Title VI).

precisely how Congress described it in the statutory language, i.e., that Congress intended the scope of coverage to be program-specific, and not institutionwide, unless the federal aid was institutionwide in nature. Only a short discussion is provided here.

When Title VI was under consideration, and prior to the addition of the pinpoint termination clause, a number of its proponents described it to be of a program-specific nature. 5/ As a result of strenuous opposition both to Title VI, including charges that it swept very broadly, and to other parts of the Civil Rights Act of 1964, Senators Mansfield and Dirksen introduced their compromise version of the Act. The Dirksen-Mansfield compromise included the language which limited a Federal agency's authority to terminate Federal aid at an offending recipient to the ". . .particular political entity, or part thereof, or other recipient as to whom such a finding [of discrimination] has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found. . . ." 6/

5/ See generally, Civil Rights: Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary, 88th Cong., 1st Sess., 1543 (1963) (Statement of Anthony S. Celebrezze, Secretary of Health, Education, and Welfare); id. at 2766 (Statement of Robert F. Kennedy, Attorney General); see also, 110 Cong. Rec. 2486 (Rep. Mathias) (1964).

6/ 42 U.S.C. §2000d-1 (1982) (Section 602 of the Civil Rights Act of 1964) (emphasis supplied).

There is strong evidence that this pinpoint termination provision was intended, in large part, to make clear what supporters of Title VI in 1964 had been saying prior to the Dirksen-Mansfield compromise: that the substantive regulatory authority contained in Title VI was no broader than the program or activity actually assisted by the Federal government. In other words, the pinpoint termination clause on the remedy side was intended as a further reassurance to opponents of Title VI that Title VI's regulatory jurisdiction was truly program-specific, as the plain language of Title VI itself stated. 7/

When Title IX was introduced in 1971, it had no program-specific limitation, but applied on an institutionwide basis. 8/ It was not adopted by Congress. When Title IX was introduced in 1972, the language was significantly different. The 1972 proposal on sex discrimination that Congress eventually adopted contained the narrower "program or activity" language but not broader language. Moreover, Congress used the term "educational institution" in other parts of Title IX, but

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7/ See generally, 110 Cong. Rec. 7058-59, 7063 (Sen. Pastore) (1964); 110 Cong. Rec. 7067 (Sen. Ribicoff) (1964); 110 Cong. Rec. 6562 (Sen. Kuchel) (1964); 110 Cong. Rec. 5607-08 (Sen. Javits) (1964); 110 Cong. Rec. 7711 (Sen. Metcalf, quoting in full a pamphlet published by the Leadership Conference on Civil Rights.) 110 Cong. Rec. 12714-12715 (Sen. Humphrey) (1964).

8/ See 117 Cong. Rec. 30155-30157 (Sen. Bayh) (1971); id., at 30408 (1971).

not in the operative ban on sex discrimination. 9/ The precision with which Congress defined "educational institution", and its use of that term in other parts of Title IX, indicates that Congress drew a distinction between "education program or activity" and "educational institution". Congress seemed clearly to have recognized that an educational institution includes within it a number of educational programs and activities. 10/

Furthermore, and also highly significant, in my view, when Congress enacted Section 901 of Title IX -- the program-specific ban on sex discrimination--it also enacted Section 904. Section 904 states, "No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity. . . ." 11/ Section 904's use of broader "recipient" language for coverage is in stark contrast to Congress' use of "program or activity" language in circumscribing Section 901. If Congress had wanted to use broader language in Section 901,

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9/ 20 U.S.C. § 1681(a)(1)-(5). (Section 901(a)(1)-(5) of Education Amendments of 1972).

10/ Rice v. President and Fellows of Harvard College, 663 F.2d 336, 338 (1st Cir. 1981).

11/ 20 U.S.C. §1684 (1982) (Education Amendments of 1972, Pub. L. No. 92-318, §904).

it could have done so but did not. 12/ Indeed, the Supreme Court, relying on many of these same points, including the contrasting language of Section 904, held that Title IX was program-specific in North Haven Board of Education v. Bell, 13/ two years before the Court decided Grove City. 14/ In North Haven, the Court said that, without defining the exact contours of "program or activity", a Federal agency's jurisdiction to regulate a Federal aid recipient extended no farther than the agency's authority to terminate Federal aid, i.e., no farther than the pinpoint termination provision of Title IX, which has generally been regarded as narrow and program-specific. 15/ The Court also relied on Title VI for its holding on this

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12/ Cf. Southeastern Community College v. Davis, 442 U.S. 397 (1979). In Davis, the Court noted that Section 504 is a nondiscrimination statute, not an affirmative action statute. The Court contrasted the affirmative action language of Section 501 of the Rehabilitation Act of 1973 with the nondiscrimination language of Section 504 of the same Act and said, "[a] comparison of these provisions demonstrates that Congress understood accommodation of the needs of handicapped individuals may require affirmative action and knew how to provide for it in those instances where it wished to do so." 442 U.S. at 411. Similarly, Congress understood how to undertake broad, institution-wide coverage in Title IX as evidenced by Section 904, but did not use that formulation in Section 901.

13/ 456 U.S. 512 (1982).

14/ The Court, in North Haven, ruled that Title IX protects employees, as well as students, against sex discrimination, in addition to making its program-specific interpretation.

15/ In North Haven, the Court upheld the validity of the Department of Education's Title IX employment regulation by noting that, while somewhat ambiguous, it was program-specific on its face. 456 U.S. 512 at 538-540.

point. Moreover, before Grove City, a significant number of lower courts had interpreted the plain language of these statutes and their legislative history to conclude that these laws are, indeed, program-specific in scope. 16/

16/ See, e.g., Hillsdale College v. Department of Health, Education and Welfare, 696 F.2d 418 (6th Cir. 1982) (Federal scholarship and loan aid to a college subjects only the college's student aid program to Title IX coverage); Dougherty County School System v. Bell, 694 F.2d 78 (5th Cir. 1982) (reaffirming earlier decision holding that Title IX is program-specific); Rice v. President and Fellows of Harvard College, 663 F.2d 336 (1st Cir. 1981) (assistance provided to the Harvard Law School financial aid program, apparently through a college work-study program, does not constitute assistance to the entire law school educational program; Title IX complaint must allege discrimination in the particular assisted program within the institution); Brown v. Sibley, 650 F.2d 760 (5th Cir. 1981) ("on the basis of the language of Section 504 and its legislative history, and on the strength of analogies to Title VI and Title IX, we hold that it is not sufficient, for purposes of bringing a discrimination claim under Section 504, simply to show that some aspect of the relevant overall entity or enterprise receives or has received some form of input from the federal fisc. A private plaintiff . . . must show that that the program or activity with which he or she was involved, or from which he or she was excluded, itself received or was directly benefitted by federal financial assistance") (footnotes omitted); Simpson v. Reynolds Metals Co., 629 F.2d 1226 (7th Cir. 1980) (Federal aid to a company's work training program subjects only that program, not the entire company, to Section 504 coverage); Bachman v. American Society of Clinical Pathologists, 577 F. Supp. 1257 (D.N.J. 1983) (Federal aid to conduct seminars on alcohol abuse does not bring the society's activity of certifying medical technologists within Section 504 coverage); University of Richmond v. Bell, 543 F. Supp. 321 (E.D. Va. 1982) (University's intercollegiate athletic program not subject to Title IX coverage because it did not receive Federal financial assistance).

Mr. Edwards. Well, we thank you very much for being here. We won't have a discussion of your testimony at this moment, but we have information that there have been pullbacks all over the country. I am sure you are a very fair person and will look at it objectively, but we have had a lot of testimony on that .

The next witness and member of the panel is Mr. Preston Oade, who is representing the Mountain States Legal Foundation of Denver, CO.

Mr. Oade, you may proceed.

Mr. Oade. Thank you very much, Mr. Chairman. I am an attorney with Mountain States Legal Foundation in Denver, CO. Mountain States Legal Foundation participated in the *Grove City* case as a friend of the court and filed a friend of the court brief in this case. We also litigate under the civil rights statues that are incorporated in this legislation——

Mr. Edwards. Can you hear back there?

A Voice. Not very well.

Mr. Edwards. Not very well.

Mr. Oade. As I indicated, we have also litigated under the civil rights statutes that this bill would incorporate. I would like to say at the outset that I am here today to oppose the bill, and I would like to give the committee the reasons for that. First of all, I would like to say what the bill is and what the bill is not.

Certainly the bill is not a restoration of title IX or other legislation.

The decision in *Grove City* was certainly faithful to the legislative intent of title IX, in that Congress specifically said that the reach of the legislation goes to the specific program or activity that receives Federal money. So I don't think the bill—someone mentioned this morning about truth in advertising. I don't think this bill meets the truth in advertising standard. It is not a restoration. It is, rather an an expansion of the definition of educational program or activity.

I think the committee is aware that there is or was Senate Bill 272, sponsored by Senator Dole, that is responsive to the *Grove City* decision by the Supreme Court and, for instance, adopted and made into law, would overrule the decision of the U.S. Supreme Court on the program specific aspect. So in the sense that this bill is a response to *Grove City* or purports to be a response to *Grove City,* I don't think it is .

What the bill does cover and what the bill would do is, if any college or university or private organization or private corpoation receives a dollar of Federal funds, all of that organization's programs would be covered. It does not just cover educational aspects of colleges and universities, but it would, by its language, cover noneducational activities of colleges and universities.

Not only that, but as I read the bill, if one department of a school system or educational institution receives Federal money, that entire system would be covered by these Federal civil rights laws.

For example, if one parochial school district in Chicago, or one parochial school in Chicago receives Federal aid, it would subject the entire archdiocese and every school in that system to Federal aid, which I am sure the committee is aware is quite an extension of the existing language and goes far beyond *Grove City*.

The bill also includes very broad language that says, "A corporation, partnership or other private organization," and then in a catch-all phrase it says, "Any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3)." And, for example, the entity described in paragraphs (1), (2) and (3) are all encompassing.

The committee might ask, "What is wrong with that?" Well, I think what is wrong with it is that it is based on the premise that Federal legislation in this area should be preempted and the Federal Government should assume all control over every private and public organization in this country.

And what it would mean, as I understand it in accordance with the Civil Rights Commission, there are 28 Federal agencies that have enforcement responsibilities for the four civil rights laws encompassed by this legislation.

Now if you will look at the regulations, I think it is apparent the cost that would be imposed by this bill. In an era of budget deficits, we are talking about imposing massive regulatory burdens on virtually every private organization in this country.

Mr. **Edwards**. If I may interrupt, only the private organizations that might be getting Federal assistance. If they don't have Federal assistance, then——

Mr. **Oade**. That is true. But what I am saying, Mr. Chairman, is for example, Mountain States Legal Foundation is a private organization. If we were to litigate against the Federal Government and receive Federal funds under the Equal Access to Justice Act, we will have received Federal funds. Does that mean that Mountain States Legal Foundation must subject itself to the regulatory burden that is imposed by this bill? And what I would like——

Mr. **Edwards** Well, why not? If you are taking Federal money and using to pay your people, why shouldn't you be nondiscriminatory?

Mr. **Oade**. Well, I don't think we are talking about the same thing, Mr. Chairman, and I will come to the why not, and I will quote very briefly from our written statement.

> The regulatory burden to which the many entities that would be subject to the four laws is a massive one. Under Title IX, for instance, subject institutions must first perform a comprehensive self-evaluation. Each institution must execute an assurance of compliance, in which it agrees to implement any action whatsoever deemed necessary by the agency's director. Similarly, under the other statutes at issue, private institutions are subjected to a host of costly and burdensome regulations. Under Title VI, for instance, institutions must prepare compliance reports that include racial and ethnic data and must open their books to periodic inspection.

For example, also in the *Grove City* case, the regulations there specified available courses. They specified the manner of student housing. They specified provision of health services. They specified student's participation in extra-curricular activities. They also controlled student curfew hours and such matters as the consequences of student marriages, pregancies and abortions.

Now I think this bill should more accurately be called the 1985 full employment bill for lawyers and bureaucrats. I deal with Federal regulations. They are immensely complex. They cost money, and certainly this country can afford civil rights. This country has demonstrated its commitment to civil rights and has demonstrated that society is willing to pay the cost of civil rights. But I think, before we impose the kind of regulatory burden of these kinds of costs in an era of budget deficit, we should take a very close look at whether this bill is precisely tailored to the nature of the problem.

I think this bill has good intentions, and I am sure everyone would agree with that. But I think it paints with too broad a brush and sweeps far too broadly.

Someone within these organizations has to fill out these compliance reports. Someone has to compile this documentation. That costs a private school money, it costs a private corporation money. These 28 Federal agencies have to have bureaucrats to sit down and read these reports and to see if this agency is in compliance.

So you are talking about, I think, significant added costs to society. And again, we don't object to spending money on civil rights. We do object to this type of regulation, which we think sweeps too broadly.

And I think I would like to echo the remarks of the gentleman from Brigham Young. In the *Grove City* case, there was no question of discrimination. I, myself, am from Michigan and am familiar with Hillsdale College, which has an outstanding reputation as an educational institution.

Hillsdale College does not discriminate. Hillsdale College demands excellence, and Hillsdale College is a fine, upstanding institution that simply does not want to subject itself to this type of Government regulation. Hillsdale doesn't want oversight on your educational programs or your admissions policies or your curfew hours for students.

I think we have room in this society for this type of pluralism. You are talking here about 25 private educational institutions. Don't we have room in America for 25 educational institutions that are not subject to this type of Federal regulation and the cost that those regulations will impose? And who pays for those costs? The students who want to attend ultimately will pay the costs, and the taxpayers who employ the people to monitor and oversee pay those costs.

So I would just like to sum up by saying this bill certainly goes beyond any restoration. What it is is an expansion of the civil rights statutes, and maybe the civil rights statutes need expansion, and of course that is a matter for this committee. But I would like to see the legislation tailored to the problem.

If there is a problem of private hospitals discriminating under the Rehabilitation Act this committee can address that. If there is a problem in public schools with women's athletics, this committee can address that.

This bill sweeps far too broadly and imposes, I think, a massive regulatory burden that is not called for and should not be imposed.

[The prepared statement of Preston Oade follows:]

PREPARED STATEMENT OF PRESTON OADE, MOUNTAIN STATES LEGAL FOUNDATION

INTRODUCTION

Mountain States Legal Foundation (MSLF) is a nonprofit, public interest litigating foundation that promotes private enterprise, individual economic liberty, private property, and limited government. Its interest in this legislation is twofold: (1) to support educational freedom and (2) to oppose the imposition of further regulatory burdens on private institutions and enterprises.

The Foundation's specific expertise arises from its involvement as amicus curiae in Grove City College v. Bell, 104 S.Ct. 1211 (1984), before both the Third Circuit Court of Appeals and the United States Supreme Court. MSLF represented its members and the American Association of Presidents of Independent Colleges and Universities. MSLF argued that the receipt of federal assistance by some of a school's students should not subject the institution to extensive federal regulations.

The Civil Rights Restoration Act would extend the federal regulatory reach far beyond reasonable parameters. It is thus not a "restoration" in any real sense, but rather an unprecedented governmental intrusion into properly private activities. In its testimony, the Foundation makes two principal agruments. First, Congress should not overturn that aspect of the Grove City decision that limits federal regulations to the specific "program or activity" that receives federal aid. Second, Congress should refrain from expanding the parameters of the federal regulatory apparatus where the basis for regulation is minimal.

I. FRAMING THE ISSUE: THE PROPER PARAMETERS OF FEDERAL REGULATION.

Senator Alan Cranston, one of the principal sponsors of the Senate version of this bill, S. 431, contends that "[t]he Civil Rights Restoration Act is about one issue and one issue only -- discrimination." Cong. Rec. S1305 (daily ed. Feb. 7, 1985)(statement of Sen. Cranston).

If this legislation was in fact limited to a prohibition against discrimination, MSLF would have no objection to it. But in reality, the issue raised by the bill is much broader: whether the federal regulatory burden should be extended to institutions whose reliance on government aid is minimal and/or indirect. Indeed, the Grove City case did not deal with discrimination at all, but rather with the extent to which federal regulations could be imposed on a private college that received no direct federal aid but some of whose students received federal assistance. As Grove City's attorney, David Lascell, explains,

> Grove City claims no right to discriminate and does not do so. Grove City receives not one cent of federal aid, claims no right to receive federal aid, and does not want any federal aid. Grove City, however, thinks that the student aid program was created so that students can choose among educational institutions . . . . That ought not mean that the entire educational institution is subject to the entire range of federal regulation . . . .

D. Lascell, "Grove City v. Bell: How Long is the Federal Regulatory Reach?" 9 Journal of Social, Political and Economic Studies, p. 38-42 (Spring 1984).

Although the proponents of this legislation are focusing on only one aspect of the Grove City decision, i.e., that Title IX is program-specific, there is an additional, equally important holding. The Court ruled that even though a program or activity is not itself a recipient of federal aid, it becomes such if individuals who are recipients of federal aid elect to spend their federal funds there. Thus, even if an institution makes a conscious effort to steer clear of federal aid, it becomes subject to a far-reaching regulatory scheme even it if establishes only the attenuated sort of relationship with a federal aid program that was at issue in Grove City.

Where the benefit from federal aid is indirect and remote, it is an injustice to inflict the same heavy federal regulatory burden on such an institution as upon an institution wholly dependent on such aid. This is the vital function of "program-specificity" -- to ensure that the federal regulatory burden extends no further than the federal benefit. After all, the very justification for regulation is the receipt of a benefit. An attenuated benefit should not provide carte blanche authority for blanket federal regulation.

Most of those who are opposed to this bill are not interested in discriminating, but rather in preserving some degree of autonomy, particularly if they receive little or no federal aid. Moreover, most are already regulated by civil rights laws including Title VII of the Civil Rights Act of 1964, the Equal Pay Act, and Executive Order 11246.

The regulatory burden to which the many entities that would be subject to the four laws involved herein[1] for the first time is indeed a massive one. Under Title IX, for instance, subject institutions must first perform a comprehensive "self-evaulation." 45 C.F.R. § 86.3(c). Each institution must execute an "assurance of compliance" in which it agrees to implement any action whatsoever "deemed necessary" by the agency's director. 45 C.F.R. § 86.4. This open-ended grant of authority, which Grove City College refused to provide, empowers the federal bureaucracy to impose punitive measures such as quotas and set-asides and to engage in social engineering. Further, the Title IX regulations impose specific guidelines in areas traditionally considered the cornerstones of academic freedom: admission policies (45 C.F.R. § 86.21); recruitment (45 C.F.R. § 86.23), and educational programs (45 C.F.R. § 86.31).

Similarly, under the other statutes at issue, private institutions are subjected to a host of costly and burdensome regulations. Under Title VI, for instance, institutions must prepare compliance reports that include "racial and ethnic data," and must open their books to periodic inspection. 45 C.F.R. § 80.6. And under § 504 of the Rehabilitation Act, the

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[1] Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act, Section 309 of the Age Discrimination Act, and Title VI of the Civil Rights Act of 1964.

Department of Justice requires that institutions submit to any "remedial action the Department considers necessary" -- again, a virtually limitless grant of governmental power. 28 C.F.R. § 42.505(a).

MSLF has no quarrel with these types of regulations imposed upon entities that largely subsist on the basis of federal funds. But where a single program or activity within an entity receives federal aid, MSLF rejects the notion that such aid "taints" the entire institution so that it may properly be subjected to open-ended governmental control. In view of the omnipresent dangers of government overreaching, MSLF believes that federal regulations should be limited to specific programs or activities receiving direct aid, and that the definition of "program or activity" should not be expanded to include institutions not previously covered as proposed in this legislation. If the issue really is discrimination, the legislation should be more narrowly tailored to accomplishing that objective, rather than imposing massive new regulatory burdens on entire private institutions that receive few, if any, benefits from the federal government.

II. THE LEGISLATION'S EXCESSES: EXPANDING THE FEDERAL REGULATORY REACH.

The proposed legislation expands federal involvement in the private realm far beyond a prohibition of discrimination in programs and activities receiving federal aid. Rather than "restoring" civil rights coverage, H.R. 700 portends a new era of federal control over private activities.

There are at least four ways in which the bill expands -- rather than restores -- federal intervention:

A. Under section 908(2)(B) of the bill, the meaning of "program or activity" is expanded to include "a local educational agency . . . or other school system." (emphasis added). Senator Kennedy, the primary sponsor of the Senate version, confirms that "[u]nder the bill, local educational agancies and other school systems are covered entirely when any part receives Federal funds." Cong. Rec. S1302 (daily ed. Feb. 7, 1985) (statement of Sen. Kennedy).

Presumably, under this interpretation, a single parochial school receiving Title I compensatory education funds would expose the entire district's school system to federal control. A religious exemption is of little significance where an assurance of compliance vesting open-ended "remedial" authority in a bureaucratic agency is required. Similarly, affiliated nonreligious schools could be subjected to federal regulation if any one of their number received federal funds for any purpose. In either case, the resulting loss of educational freedom could hardly be justified by any direct benefit accruing to schools that do not receive federal funds but who are "tainted" by affiliation with those that do.

B. By broadly defining "program and activity" under Title IX to include "a corporation, partnership, or other private organization" and to "any other entity determined in a manner consistent" with respect to other covered entities, the bill raises for the first time the possibility that Title IX will be extended to non-educational institutions.

For instance, if a large corporation sponsors an educational seminar that receives a government grant, the legislation by its plain language would cover "all of the operations of . . . [the] corporation".[2] Presumably, under 45 C.F.R. § 86.4, the corporation would be required to execute an assurance of compliance that vests the Department of Health and Human Services the power to take any actions "deemed necessary" with respect to any of the corporation's operations.

C. Similarly, the definition of "program or activity" is expanded under Title VI, the Rehabilitation Act, and the Age Discrimination Act, to include "all of the operations" of a covered entity. Thus if an automobile manufacturer receives a defense contract to develop a tank, all of its operations, including other plants and products, would be covered in their entirety, despite the absence of federal aid to those specific and distinct operations.

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[2] Query under the preceeding subsection "A," whether receipt of federal funds by a single parochial school could subject not only the parochial school system but the archdiocese itself to regulation.

D. Perhaps the most ominous aspect of this bill is the wholesale expansion of coverage under all four laws to include "any other entity." As Senator Cranston explains, "[t]he same institution-wide principles [will be] used to determine coverage . . . for any entity which does not fit one of these . . . categories." Cong. Rec. S1307 (daily ed. Feb. 7, 1985)(statement of Sen. Cranston).

Senator Durenberger attempted to reassure those concerned with this remarkable open-ended provision by stating,

> Some have labeled supporters of this bill as proponents of unwarranted Government intrusion. I believe this opinion is misguided . . . . For example, an establishment that is not a direct beneficiary of Government assistance, but which acts as a conduit to the major benefactor, would continue to be exempt from the coverage of the statutes.
>
> So, for instance, the "Ma & Pa" grocery store that accepts food stamps need not worry that providing this service will bring a whole new range of Federal regulation. The store is acting as a conduit of food stamp aid from the Government to the customers, and will not be subject to Government scrutiny as if an actual aid recipient. Our civil rights statutes are not intended to broaden the Federal Government's jurisdiction to such a degree, and neither is the legislation before us today.

Cong. Rec. S1311 (daily ed. Feb. 7, 1985)(statement of Sen Durenberger).

But that is precisely the situation presented in Grove City, which this bill is intended to reverse: a "consumer" receives federal aid, applies it to the cost of goods and services at a private institution that does not receive federal aid, and thereby subjects the institution to an entire array of federal regulations. Moreover, the bill itself calls for a "broad scope of coverage," in contrast to the narrow approach suggested by Senator Durenberger. Consequently, if "Ma & Pa" grocery stores and institutions like Grove City College want to avoid the imposition of massive additional regulatory burdens, they will have to carefully exclude all beneficiaries of federal aid.

CONCLUSION

There is little question that Congress has the power to regulate private institutions in America to whatever extent it so desires. But this proposed legislation proceeds under false assumptions: that the regulatory burden is limited to those who benefit from federal aid, and that the bill is "restorative" rather than expansionist. It is most certainly the latter, extending the tentacles of government control far beyond the justifications articulated by the sponsors themselves.

MSLF submits that the present four laws at issue, as interpreted by the Supreme Court in *Grove City*, achieve a proper balance by ensuring that those aided by federal funds shall not discriminate, without subjecting non-beneficiaries to massive new regulatory burdens. Accordingly, MSLF respectfully urges this body to reject the legislation.

Mr. **Edwards**. Thank you very much, Mr. Oade.

We are now going to hear from the attorney general of the Navajo Nation, the Honorable Claudeen Arthur, of Window Rock, AZ.

Mr. **Visick**. Mr. Chairman, would I be out of order if I asked to be excused from this hearing?

Mr. **Edwards**. Thank you very much for your testimony.

Ms. **Arthur**. Mr. Chairman, members of the committee, I want to thank you for the opportunity to testify on behalf of the Navajo Nation and the Navajo People. We are the largest Indian tribe in the country, and we support H.R. 700, the Civil Rights Restoration Act of 1985. This bill is of great importance to the Indian people and the Indian community. We are part of the broader community of people of color in this Nation who have benefited from the last few decades of gains made against discrimination because of the civil rights protection in the Federal laws.

Because the *Grove City* decision went to education, the focus has been on education and on title IX. But I want to state to you that Indian people are affected by all four of the laws.

Indian people have somewhat of a double discrimination. There are Indian people who happen to be women. There are Indian people who happen to have handicaps. There are Indian people who are in the senior citizen bracket. So sometimes we find that people have a double discrimination, and I wanted to bring that out, although the focus has been on education, and that is perhaps where we see most of the effects. But I wanted to simply point that out.

We are concerned after *Grove City,* and we, along with others, were afraid—that is probably the right word—that basic civil rights that we felt we had won over the years under the present laws would be eroded. And the reports that we are hearing, the lack of enforcement that we are hearing now bears that out. Our fears seem to be coming about.

We agree with John F. Kennedy's exclamation in 1964 that the intent of the original civil rights legislation requires that public funds to which taxpayers of all races, including Indian people, contribute not be spent in any fashion which encourages, subsidizes or results in discrimination, because I think that is the issue.

If there is a slight encourgement there, if there is a subsidy there, that has a direct effect. That is what we are really getting at. We can all see the very direct types of programs that receive funds, that that is what the *Grove City* case got to. It was saying it wasn't direct. But it is really the others, the ones that are more hidden, that we need to deal with.

We have made gains for minorities, and we who have benefited from such gains will not and cannot tolerate any movement which puts us backward.

I liked the illustration this morning that the woman gave about the ink in the glass of water, and I am a bit like she was or like her father was, in that I like illustrations. And I see that forward motion and progress in the civil rights front by illustration.

Perhaps because I was raised on the Navajo Reservation and was 9 years old when I first saw an escalator, it made a difference to me, and I see that and it illustrates to me a lot of things. They move rather slowly. And if you walk up on one that's going down, you can make progress if you committee keep going and you can reach the top, and it may be a little difficult. But the very second that you stop going up on a down escalator, you are going backwards, and that is the illustration that I want to see here; that what we want to see is to continue that walk up in the civil rights area.

The *Grove City* decision suggests that we stop at a certain point in fighting discrimination and only allow enforcement if Federal funds go to a very narrow, defined, particular program, but that is not enough. That restricts Federal enforcement such that the movement goes backward.

Indian college students, who have a very difficult time in any case and specifically show very high dropout rates, will face an even more insidious type of discrimination if we don't restore the rights under the Civil Rights Act. It is possible that they could be now again excluded, as they were in past years, from programs or activities that don't directly receive Federal funds, the special programs, the programs perhaps that we, as Indian people, a minority people, have seen at colleges and feel that we need this type of program.

The colleges could very well say, "We are not putting Federal funds into those programs, so therefore the laws don't apply," while the school, itself, in the larger sense, would receive huge amounts of Federal funds.

In other words, the students would be faced with discrimination in one program, where nondiscrimination is enforced because such a program gets funds, and face discrimination in another program, where Federal enforcement would be restricted because that program gets no Federal funds. And they would be walking through this maze of, "Are we or are we not going to have our rights trampled upon simply because the Federal funds are received or not received directly?"

It seems to us that civil rights should not be dependent upon that type of a maze program. It is important to these students that discrimination is not only just directly affecting them, but that Federal funds cannot be used indirectly to discriminate against them.

I think it is also very important for us to remember that the receipt of Federal funds is not mandatory. I hear things about the massive regulations, but that is a choice that those institutions make. Agencies and entities that want to take Federal funds should be required to follow the law. If they don't want to follow the law, if they don't want massive regulations, then they don't need to take the funds. It's as simple as that.

We support the bill and we support the restoration of the broader interpretation of the civil rights laws. Thank you.

Mr. **Edwards**. Thank you very much, Ms. Arthur.

The last member of the panel to testify is Prof. Ruth Luckasson, of the University of New Mexico in Albuquerque.

Welcome. You may proceed.

Ms. **Luckasson**. Thank you very much, Mr. Chairman, members of the committee.

My name is Ruth Luckasson, and I am an attorney and an assistant professor of special education at the Unviersity of New Mexico. But I want to make clear at the outset that I am not testifying as a representative of the university. My work is focused on the legal rights of persons with handicaps.

I was formerly a managing attorney of the New Mexico Protection and Advocacy System, which provides legal and administrative support to people with developmental disabilities. I am currently the chairman of the Standing Committee on Legislative and Social Issues of the American Association on Mental Deficiency.

I have brought with me today a summary of my remarks in support of H.R. 700, and I would like to request the opportunity to submit them.

Mr. EDWARDS. They will be made a part of the record.

[The statement of Ruth Luckasson follows:]

PREPARED STATEMENT OF RUTH LUCKASSON, ATTORNEY AND ASSISTANT PROFESSOR OF SPECIAL EDUCATION AT THE UNIVERSITY OF NEW MEXICO.

I wish to state at the outset that I am not testifying as a representative of the University.

My work is focused on the legal rights of persons with handicaps.

Formerly the managing attorney of the New Mexico Protection and Advocacy System, which provides legal and administrative support to New Mexicans with Developmental Disabilities.

Chairman of the Standing Committee on Legislative and Social Issues of the American Association on Mental Deficiency (AAMD).

The AAMD is the oldest and largest interdisciplinary organization of professionals that works exclusively in the field of mental retardation. The total membership of almost 10,000 persons is divided into interest groups or "divisions" in the following areas: Legal Process, Education, Administration, Nursing, Medicine, Psychology, Social Work, Speech Pathology and Audiology, Recreation, Vocational Rehabilitation, Community Living, and Residential Living.

The AAMD was organized over 100 years ago in 1876. The Association thus has substantial experience with persons with mental retardation. The Association's long history places it in a unique position to comment on the invidious discrimination which historically has damaged the lives of persons with disabilities and which continues today to deprive them of their civil and constitutional rights.

This committee heard telling testimony earlier on the debilitating effects such discrimination can have on citizens' lives. I will trace the damage this has caused to the ability of handicapped persons to seek legal redress for the damage.

One of the most important legal tools available to people with handicaps, that is the antidiscrimination legislation of section 504 of the Rehabilitation Act of 1973, was gutted last year by the United States Supreme Court in *Grove City* v. *Bell* and *Consolidated Rail* v. *Darrone*. The narrow "program specific" ruling in those cases causes people with handicaps to again have their legal rights vulnerable to the prejudices and false stereotypes which characterized their victimization prior to the enactment of section 504. It was just those types of prejudices and stereotypes which caused Congress to pass section 504. We are now seeing brazen examples of discrimination arise in many areas.

The governing council of the AAMD on January 12, 1985 unanimously passed a Resolution urging that protection of the civil rights of disabled people be restored at the earliest possible date by the 99th Congress. The Resolution reads:

RESOLUTION

Discrimination against persons with mental retardation occurs in a variety of settings and programs and federal law must clearly outlaw the discrimination wherever it is supported by federal money. The Supreme Court decision in *Grove City College* v. *Bell* makes it imperative that Congress reenact a law protecting the rights of citizens with mental disabilities. The administration has proposed limiting protection to schools and thus excluding all other recipients of federal funds.

AAMD strongly believes that the rights of citizens with mental retardation must be protected from all discrimination and therefore, we urge the Congress to pass the

Civil Rights [Restoration] Act of 1985 and to resist all attempts to limit the scope of its protection.

This Resolution represents a remarkable consensus among mental retardation professionals that the *Grove City* decision is an ominous threat to the rights of all mentally retarded people. Let me give you an example of the type of situation we are concerned about:

The AAMD recently filed an Amicus Curiae brief before the United States Supreme Court, written by Professor James Ellis of the University of New Mexico School of Law and myself. The case was *City of Cleburne, TX.* v. *Cleburne Living Center, Inc.* The AAMD was joined in this brief by the Association for Persons with Severe Handicaps, Amer. Psycholo. Assn, Amer. Psychiat. Assn, Amer. Orthopsychiatric Assn., Amer. Assoc. of Univ. Affiliated Programs for the DD, and the Council for Exceptional Children. these are the seven main associations of professionals who serve people with mental retardation.

The case involved the exclusion in the City of Cleburne, Texas of a group home for 13 mildly mentally retarded citizens from an apartment house district of the city. The zoning designation in the location would have allowed any apartment houses, apartment motels, boarding and lodging houses, fraternity or sorority houses, dormitories, hospitals, nursing homes, private clubs and even, acedg to testimony, a group home for criminals. The reasons given for the exclusion are representative of the types of prejudices which have long formed the basis of discrimination, and included:

(1) Reference to the "attitude" of the neighbors,
(2) "concerns" for the "fears" of elderly neighbors,
(3) the home's location on a "five hundred year flood plain," etc.

The transcript of the zoning hearing reveals confusion and ignorance of what mental retardation is and groundless fears founded on mere stereotypes and prejudices.

Several challenges to the ordinance on its face and as applied were raised by the plaintiffs. The 14th amendment equal protection clause challenge is currently before the U.S. Supreme Court.

Originally, there was, in addition to the Equal Protection Claim, a 504 claim that the city was discriminating against handicapped persons in zoning. The principal barrier to the success of that claim was whether or not the City of Cleburne's actions were controlled by Section 504. The original complaint cited the receipt of Revenue Sharing Money as bringing the city's actions within the scope of 504. That claim has been abandoned in the U.S. Supreme Court because *Grove City* precludes all but the narrowest reading. Even though the City of Cleburne receives federal funds and even though the city's discrimination against handicapped persons is clear in this case, the Court of Appeals ruled that the particular zoning activities of the City Council were not directly financed with federal funds (citing *North Haven Board of Education* v. *Bell*) and that the City Council itself, even though it disperses federal funds, sued a zoning power "separate" from its money dispersal power and was therefore considered a separate program.

Such restrictive and narrow "program or activity" language allows this result.

This is only an example and I use it because it was before the Supreme Court on March 18.

I urge Congress to pass H.R. 700. The rights of handicapped people are insignificant jeopardy in many areas, not simply education. Their rights must be protected in all areas, including health care, employment, living arrangements and social services. Therefore, I strongly urge that protections not be limited to education.

In fact, for handicapped people, the area of education may have the smallest practical importance because of Public Law 94-142, The Education for all Handicapped Children Act. With New Mexico's entry into the special education program last year, all the states are now covered by the education protections of that statute. There is however, no parallel protection outside of the area of education that will protect handicapped people from the other forms of discrimination. Thus for handicapped people, a bill which addresses only education, address the least important area affected by *Grove City*.

Ms. Luckasson. Thank you very much.

The American Association on Mental Deficiency is the oldest and largest interdisciplinary organization of professionals that works exclusively in the field of mental retardation. The total membership of almost 10,000 people is divided into interest groups in many areas, including education, private facility administration, community living, medicine, nursing, communications disorders, a wide range of professionals in the fields.

The American Association on Mental Deficiency was founded over 100 years ago, in 1876. The association has substantial experience with persons with mental retardation, and the association's long history places it in a unique position to comment on the incidious discrimination which historically has damaged the lives of people with disabilities and which continues today, despite some other testimony that you have heard this afternoon. We know it continues today to deprive people with handicaps of their civil and constitutional rights.

The committee heard telling testimony earlier on the debilitating effects such discrimination can have on citizens' lives. I will trace the damage this has caused to the ability of handicapped persons to seek legal redress for the damage.

The governing council of the American Association on Mental Deficiency on January 12 of this year unanimously passed a resolution urging that protection of the civil rights of disabled people be restored at the earliest possible date by the 99th Congress. The resolution reads, and I quote:

> Discrimination against persons with mental retardation occurs in a variety of settings and programs, and Federal law must clearly outlaw the discrimination wherever it is supported by Federal money. The Supreme Court decision in *Grove City College* v. *Bell* makes it imperative that Congress reenact a law protecting the rights of citizens with mental disabilities. The administration has proposed limiting protection to schools and thus excluding all other recipients of Federal funds.
>
> The American Association on Mental Deficiency strongly believes that the rights of citizens with mental retardation must be protected from all discrimination and, therefore, we urge the Congress to pass the Civil Rights Restoration Act of 1985 and to resist all attempts to limit the scope of that act's protection.

This resolution, Mr. Chairman, and members of the committee, represents a remarkable consensus among mental retardation professionals that the *Grove City* decision is an ominous threat to the rights of all mentally retarded people. Let me give you an example of the type of situation we are concerned about.

The American Association on Mental Deficiency recently filed an amicus curiae brief before the U.S. States Supreme Court, written by Prof. James Ellis, of the University of New Mexico School of Law, and myself. The case was *City of Cleburne, TX,* v. *Cleburne Living Center, Inc.* The AAMD was joined in this brief by the seven main national associations of professionals who service people with mental retardation, including the American Psychiaric Association and the American Psychological Association.

The case involved the exclusion in the city of Cleburne, TX, of a group home for 13 mildly mentally retarded citizens from an apartment house district of the city. The zoning designation in this location would have allowed any apartment houses, boarding houses, lodging houses, fraternities and sororities, dormitories, hospitals, nursing homes, private clubs and even, according to testimony, a group home for criminals, but the mentally retarded people were excluded. The reasons given for the exclusions are representative of the types of prejudices which have long formed the basis of discrimination.

These reasons included reference to the, quote, attitude of the neighbors, concerns for the, quote, fears of elderly neighbors, and the home's location on a 500-year flood plain. Those were the reasons given for the exclusion of the home.

The transcript of the zoning hearing reveals confusion and ignorance of what mental retardation is and groundless prejudices and fears. Several challenges to the ordinance, on its face and as applied, were raised by the plaintiffs. The 14th amendment equal protection clause challenge is currently before the U.S. Supreme Court.

Originally there was, in addition to the equal protection claim, a 504 claim that the city was discriminating against handicaped persons in zoning. The principal barrier to the success of that claim was whether or not the city of Cleburne's actions were controlled by section 504. The original complaint cited the receipt of revenue sharing funds as bringing the city's actions within the scope of 504.

That claim had to be abandoned in light of the *Grove City* decision. And even though the city of Cleburne receives Federal funds and even though the city's discrimination against handicapped persons is clear in this case, the court of appeals ruled that the particular zoning activities of the city council were not directly financed with Federal money, and therefore we had to drop our claim.

This is only an example, and I use it only because it was before the U.S. Supreme Court on March 18.

I urge Congress to pass H.R. 700, rather than the more restrictive legislation. The rights of handicapped people are in significant jeopardy in many areas, not just education. And I will submit, as part of my written testimony the brief that we filed in the *Cleburne* case, which includes examples from all 50 States of discriminatory legislation in many, many areas.

The rights of handicapped people must be protected in all areas, including health care, employment, living arrangements, and social services. In fact, as more and more handicapped people leave the different institutions and enter the community, the opportunities for discrimination increase, and it becomes more imperative that other areas be available for redress. Therefore, I strongly urge that protections not be limited to education.

In fact, for handicapped people, the area of education may have the smallest practical importance because of Public Law 94-142, the Education for All Handicapped Children Act. With New Mexico's entry into the special education program last year, all the States are now covered by the education protection outside of the area of education, following *Grove City* that will protect handicapped people from other forms of discrimination. Thus, for handicapped people, a bill which addresses only education addresses the least important area affected by *Grove City*.

I would, at the end of my remarks now, also like to take issue with the comments of the gentleman from Brigham Young. It is an unfair characterization to say that no lawyers prior to *Grove City* believed that the civil rights legislation was as program specific as *Grove City* ruled.

I would also like to take issue with his comments that no educational institutions are pulling back. That is clearly incorrect. Many educational institutions are pulling back in many different areas, and the Justice Department has been less vigorous in pursuing the problems, in light of the *Grove City* decision.

Thank you very much, Mr. Chairman.

Mr. **Edwards**. Thank you very much. That was very useful testimony.

Mr. Hayes.

Mr. **Hayes**. She just saved my day. I just want to say that I appreciate the testimony from all five witnesses. Your positions have been quite clear. I think a tally would show three for, and two against, there is no question about it.

Mr. Oade, just so I can be clear, your position is that you are against H.R. 700. But am I to understand that you are for the Senate version, proposed by Senator Hatch, I believe, 272?

Mr. **Oade**. Yes, I think the Senate bill addresses——

Mr. **Hayes**. You recognize its limitations, though?

Mr. **Oade**. Yes, I recognize its limitations. But I think it would address all of the concerns that I have heard expressed here today.

Mr. **Hayes**. Being a member of a minority, my offhand reaction, if I had to make a characterization of your testimony, is that, in effect, I am willing to see you have a fair trial, but execution is the penalty.

Mr. **Oade**. I don't think my remarks in any way construed that, Mr. Hayes.

Mr. **Edwards**. We appreciate all the testimony. I wonder, Mr. Oade, if you have an observation about Professor Luckasson's testimony? She seemed to disagree with you rather strongly.

Mr. **Oade**. Well, it seems to me that she was saying—and I can really relate to her testimony. When I lived in Detroit, I was right next door to the Detroit Association for the Mentally Retarded. They were the best neighbors I ever had.

There is prejudice against the handicapped, and I think the situation that she talked about needs to be remedied. But again, I think this bill goes far beyond that, and I think the Senate bill would rectify the problem that she identifies in section 504.

I would also like to say one other thing. The fact that, well, if you don't want regulation, don't take Federal money. Federal money is so pervasive in our society that an institution like Hillsdale College, what they will be forced to do if they don't want Federal regulation is they will be forced to say, "We can't accept any student who receives Federal aid."

So the Government is actually subsidizing students. And the Government says, "You can go anywhere you want, but if you want to go to Hillsdale College, which doesn't want Federal regulation, we are not going to give you any money."

Now it is a free market and Hillsdale has to compete, and they have a reputation for excellance. But if you say, "Well, if you go to Hillsdale, we won't give you any money, but if you go to the University of Michigan, we will," clearly that discriminates against Hillsdale College. So I don't think it is a question.

If there was no Federal aid to students, then it would be fair to say, "If you don't want regulation, don't take Federal aid." That would be fair if there were no Federal aid to students. But every student who can get Federal aid should have a choice. And ultimately if Hillsdale doesn't want to be regulated, it is the students who should choose, I think.

Mr. **Edwards**. Well, I have a problem with your response. The same could apply to Stanford or the University of California at Berkeley, with 60,000 students. Where do you draw the line?

Mr. **Oade**. Well, I think you draw the line on where the line has been drawn. There are not that many small liberal arts colleges that have taken the kind of principled stand that Hillsdale has taken or taken the stand that Brigham Young has taken. They don't want Federal regulation. They know what that does to their ability, to their timing.

Mr. Chairman, again if these colleges are discriminating, then that is fine. But I don't think you even have to tie it to Federal dollars to outlaw discrimination. I think Congress has the power to say, "We are going to regulate you, regardless of whether you get Federal money." That is done in title VII of the Civil Rights Act.

Mr. **Edwards**. But you are saying, Mr. Oade, that these small colleges that you refer to—everybody in the room admires them—want the privilege of discriminating. Even though they say they are not going to, if they don't comply with the Federal civil rights statutes, they are free to do it and still accept Federal funds.

Mr. **Oade**. Well, I think that overlooks the reality of the situation. I have not heard anyone say, and no one said it in the *Grove City* case, that Grove City doesn't want this regulation because it wants to be free to discriminate. Nobody has said that. Nobody has said Grove City discriminates, nobody has said Hillsdale discriminates.

What it is is that the cost of delivering education—and there is competition for educational services in this country, there is no question about it. There is a real cost of this regulation. So it is not discrimination, it is imposing an unnecessary cost.

If there is discrimination at Hillsdale College, Mr, Chairman, I will be the first to agree that they need Federal oversight, and society in general is going to pay the cost and Hillsdale is going to pay the cost.

Mr. **Edwards**. I am not sure we can take the chance. The day after the bill passes and we exclude this particular college, how do we know they don't get a new president and start discriminating all over the place?

Mr. **Oade**. Well, I guess you don't know. But what you are saying is, "We are going to impose these costs on the chance that Hillsdale College or Grove City College or Brigham Young University is trampling the rights of minorities——

Mr. **Edwards**. I don't believe that is a correct observation, either. As the Attorney General said, "If they want to take advantage of Federal largesse, there are going to have to be some rules."

We have to go and catch an airplane for dear old MX. Do any of the witnesses have a burning desire to say a couple of words?

We thank you all very much.

[Whereupon, at 2:05 p.m., the committee adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF THE DISABILITY RIGHTS EDUCATION AND DEFENSE FUND ON BEHALF OF

American Coalition of Citizens with Disability; Association of Citizens with Learning Disability; Association of Retarded Citizens; Center of Law and Social Policy; Conference of Education Administrators Serving the Deaf; The Convention of American Instructors of the Deaf; Council for Exceptional Children; Epilepsy Foundation of America; and National Alliance for the Mentally Ill.

The National Association of Private Residential Facilities for the Mentally Retarded; National Council on Rehabilitation in Education; National Easter Seals Society; National Head Injury Foundation; National Mental Health Association; National Recreation and Parks Association; National Rehabilitation Association; National Society for Children and Adults with Autism; Spina Bifida Association of America; and United Cerebral Palsy Association, Inc.

H.R. 700, "CIVIL RIGHTS RESTORATION ACT OF 1985"

COMMITTEE ON EDUCATION AND LABOR AND SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON THE JUDICIARY

This written testimony on H.R. 700 "The Civil Rights Restoration Act of 1985" is submitted on behalf of the Disability Rights Education and Defense Fund (DREDF). It supplements the oral testimony of Arlene B. Mayerson, Directing Attorney of DREDF, which will also be presented.

The Disability Rights Education and Defense Fund (DREDF) is a national research, education, community organizing, and advocacy organization. DREDF provides direct information and support to a network of 4,000 disabled individuals and community-based organizations throughout the United States on disability civil rights issues and works closely with other national organizations and defense funds that work on behalf of other disenfranchized persons.

The purpose of the written testimony set forth below is (1) to fully document the importance of Section 504 of the 1973 Rehabilitation Act in assuring equal opportunity to 36 million disabled Americans and, (2) to highlight the devasting effect that the Supreme Court's decision in *Grove City College* has had and will continue to have in attaining this Congressional goal. A review of the legislative history of Section 504 and the administrative interpretations which have been endorsed by Congress demonstrate that Congress intended Section 504 to broadly prohibit disability-based discrimination by all programs and activities receiving federal funds.

INTRODUCTION

The basic purpose of the Civil Rights Restoration Act of 1985 (H.R. 700) is to reaffirm this nation's commitment to equality of opportunity by assuring that recipients of federal financial assistance are prohibited from discriminating on the basis of race, national origin, sex, disability or age. Such discrimination is currently prohibited by Title VI, 42 U.S.C. Section 2000d, Title IX, 20 U.S.C. Section 1681 et. seq., Section 504 of the 1973 Rehabilitation Act, 29 U.S.C. Section 794, and the Age Discrimination Act, 42 U.S.C. Section 6101 et. seq. Each of these statutes bars discrimination in any program or activity receiving federal financial assistance.

On February 29, 1984 the U.S. Supreme Court decided Grove City College v. Bell 465 U.S.__, 104 S. Ct 1211, (1984) which gives an unduly restrictive interpretation to the term "program or activity" in Title IX. The court held that a college which receives federal money only in the form of student financial aid is a recipient of federal financial assistance under Title IX, but that under these circumstances, the only part of the college which is covered by Title IX is the student financial aid program. The rest of the college is free to discriminate on the basis of sex. Because Title IX, Section 504 and the Age Discrimination Act are all modeled after Title VI which contains the "program or activity" language, the Grove City decision has grave implications for all of this nation's primary anti-discrimination statutes. In fact, on the same day that the Grove City decision was handed down the Court held in

Consolidated Rail Corporation v. Darrone, 465 U.S.__, 104 S. Ct. 1248 (1984), that the Court's narrow interpretation of "program or activity" for Title IX would apply to Section 504. Under the Court's interpretation in Grove City College, the Congressional purpose in enacting these statutes--to assure that federal funds do not aid discrimination--would be defeated. A university receiving substantial amounts of federal aid could discriminate against blacks, women or disabled people in its medical or law schools so long as these programs were kept free of federal funds. In fact, the erosion of civil rights protections can already be seen in post-Grove City court decisions and federal agency actions. After years of progress in opening the doors to these formerly disenfranchised groups, the Court's decision has served to shut them once again. H.R. 700 simply reaffirms the purpose of these statutes to broadly prohibit discrimination by all those who choose to accept federal financial assistance.

Amendment to Section 504 Contained in the Civil Rights Restoration Act of 1985 (H.R. 700)

In order to assure Congress' original intent that Section 504 broadly prohibit discrimination on the basis of disability by all programs and activities receiving federal financial assistance, Section 504 of the Rehabilitation Act would be amended: (1) by inserting "(a)" after "Section 504"; and (2) by adding at the end the following new subsection:

> (b) For the purposes of this section, the term 'program or activity' means all of the operations of--
>
> 1(A) a department or agency of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a university or a system of higher education; or

(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

(3) a corporation, partnership, or other private organization; or

(4) any other entity determined in a manner consistent with the coverage provided with respect to entities decribed in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance..

This is in direct conformity with the amendments offered as part of H.R. 700 on Titles VI and IX and the Age Discrimination Act.

Section 505(a)(2) remains unchanged by H.R. 700. However, since the procedural complaint and enforcement regulations under Title VI (which are authorized by Section 602 of Title VI), are incorporated into 505(a)(2), the amendments to Section 602 are relevant here. Section 602 of Title VI is being amended by H.R. 700 to maintain a distinction between the broad, institution wide anti-discrimination coverage provided under the statute and the narrowly targeted fund termination power of the federal government. Section 602 of Title VI would be changed as follows:

(b) The third sentence of section 602 of the Civil Rights Act of 1964 is amended--

(1) by striking out "program, or part thereof, in which" in paragraph (1) and inserting in lieu thereof "assistance which supports"; and

(2) by striking out "has been so found" in

paragraph (1) and inserting in lieu thereof "so found."

This amendment would in effect (via Section 505(a)(2)) apply with equal force to Section 504 enforcement.

SECTION 504 BROADLY PROHIBITS PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM DISCRIMINATING ON THE BASIS OF HANDICAP

A. The Legislative History of Section 504 Evidences Congressional Intent to Broadly Prohibit Discrimination on the Basis of Handicap

The legislation which became the Rehabilitation Act of 1973 was vetoed twice by President Nixon before it was signed into law on September 26, 1973. (Pub. Law No. 93-112) Sen. Rep. No. 93-318, 93rd Cong., 1st Sess. *reprinted in* 1973 U.S. Code Cong. and Ad. News 2076, 2086-2090. Section 504 was included in all three versions of the act.[1]

The intent to ban discriminatory policies and practices in order to assure equal opportunity to disabled citizens is evident throughout the legislative history. As part of its consideration of the Rehabilitation Act of 1973, the Senate Committee on Labor and Public Welfare heard extensive testimony regarding the operation of vocational rehabilitation programs. The Senate report on the 1973 Act summarized the problems which were highlighted in these hearings including:

> the lack of action in areas related to rehabilitation which limit a handicapped individual's ability to function in society, e.g., employment discrimination, lack of housing and transportation services and architectural and transportational barriers. Sen. Rep. No. 318, 93rd Congress, 2nd Sess. (1973), *reprinted in* U.S. Cong. and Ad. News at 2078.

Congress responded to this problem by enacting provisions prohibiting discrimination. There can be no doubt that Section 504 was intended to broadly ban discrimination. Senator Harrison Williams, chairman of the full Committee on Labor and Public Welfare and the leading sponsor of the Act summarized:

> The committee also found it necessary to place special emphasis on target populations whose needs were not being met, and to grapple with problems, which while not related solely to rehabilitation, pose serious problems for handicapped individuals in becoming employed, staying employed, and generally supporting themselves within their communities. In this respect, the committee payed (sic) special attention to the problems of employment discrimination, lack of housing and transportation facilities, and the prevalance of architectural and transportation barriers.
> 119 Cong. Rec. at 24587-24588 (1973).

Senator Alan Cranston, a primary sponsor of Section 504, noted that simple extention of the existing 53-year-old Vocational Rehabilitation Act was not enough to insure equal opportunities for handicapped persons.

> Such problems as unfounded discrimination in employment and in housing, difficulties of access to places of work and treatment centers, and duplication and fragmentation of services across program lines were voiced repeatedly to the committee . . .
> 119 Cong. Rec. 5882 (1973).

Moreover, it was recognized that discrimination had an especially detrimental impact on the vocational rehabilitation program.

As stated by Senator Cranston:

> (D)iscrimination in placement, hiring and advancement continues to limit the vocational rehabilitation program's ability to effect successful rehabilitations . . . The expenditure of money on vocational rehabilitation programs is not well spent if we do not at the same time take meaningful steps to eliminate architectural barriers and provide substantial

> opportunities in employment for handicapped individuals. 119 Cong. Rec. S. 5882 (1973).

Senator Robert Taft, Jr. also emphasized the need for strong anti-discrimination provisions:

> The basic purpose of vocational rehabilitation continues to be to help physically and mentally handicapped individuals achieve the ability to work, earn, and live independently in their communities. Yet in spite of the relatively high success of this program, we still have a long way to go . . . . Too many handicapped Americans are not served at all, too many lack jobs, and too many are underemployed--utilized in capacities well below the levels of their training, education and ability. However, if we are to assure that all handicapped persons may participate fully in the rewards made possible by the vocational rehabilitation program, _we must devote more of our energy toward the elimination of the most disgraceful barrier of all--discrimination._ 119 Cong. Rec. 24587 (emphasis provided).

The Senate report which accompanied the final bill also reflected the broad remedial intent of Section 504:

> The committee strongly believes that all planning of buildings, public and private, transportation systems, communications systems and all public programs and services must make provision for the need of handicapped individuals. S. Rep. No. 31, 9, 93rd Cong., 1st Sess. 6 (1973).

As expressed by Senator Jennings Randolph, "These (provisions) will help expand the vistas of opportunity for handicapped individuals across our land." 119 Cong. Rec. 24587 (1973).

The legislative history of the 1974 Amendments to the Rehabilitation Act further demonstrate Congressional intent to create a broad government policy prohibiting discrimination on the basis of handicap. As stated in the Senate Report:

> Section 504 was patterned after, and is almost identical to, the antidiscrimination language of Section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1 (Title VI) (relating to race, color or national origin), and

> Section 901 of the Education Amendments of the 1972, 42 U.S.C. 1683 (relating to sex). The section therefore constitutes the establishment of a *broad government policy that programs receiving Federal financial assistance shall be operated without discrimination on the basis of handicap.* S. Rep. No. 93-1297, 93rd Cong., 2d Sess., *reprinted in* (1974) U.S. Code Cong. & Ad. News 6373, 6390 (emphasis added).

Senate Report No. 12979, 93rd Cong., 2d Sess. 38 (1974) described institution or entity coverage under Section 504 in a wide range of activities:

> Section 504 was enacted to prevent discrimination against all handicapped individuals, regardless of their need for, or ability to benefit from, vocational rehabilitation services, in relation to Federal assistance in employment, housing, transportation, education, health services or any other Federally aided programs. Examples . . . are as follows: physically or mentally handicapped individuals who may be denied admission to *Federally assisted nursing homes* on the basis of their handicap; those persons whose handicap is so severe that employment is not feasible but who may be denied the benefits of a *wide range of Federal programs*; and those persons whose vocational rehabilitation is complete but who may nevertheless be discriminated against in Federally assisted activities (emphasis added).

Further, Congress demonstrated its intent to ensure that all institution or entities would not discriminate by referring to coverage of "recipients." Congress did not wish to give federal financial assistance to any recipient that discriminated on the basis of race, sex or handicap.

> The language of Section 504, in following the above cited Acts further envision the implementation of a compliance program which is similar to those Acts, including promulgation of regulations providing for investigation and review of recipients of Federal financial assistance, attempt to bring noncomplying recipients into voluntary compliance through informal efforts such as negotiations, and the imposition of sanctions against recipients who continue to discriminate against otherwise qualified handicapped persons on the basis of handicap. Such sanctions would include, where appropriate, the termination of Federal

> financial assistance to the recipient or other means otherwise authorized by law. Implementation of Section 504 would also include pre-grant analysis of recipients to ensure that federal funds are not intially provided to those who discriminate against handicapped individuals. Such analysis would include pre-grant review procedures and a requirement for assurance of compliance with Section 504. S. Rep. No. 93-1297, supra. at 6390-91 (1974) (emphasis provided).

The 1978 Amendments to Secton 504 (Rehabilitation, Comprehensive Services and Developmental Disabilities Act of 1978) added Section 505(a)(2) which provides:

> The remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964 shall be available to any person aggrieved by any act or failure to act by any recipient of federal assistance or federal provider of such . . .[2]

Section 505(a)(2) was intended to give approval of and to codify the 1977 HEW regulations. See Consolidated Rail Corporation v. LeStrange, supra. In addition to the substantive regulations under Section 504, HEW also had incorporated the administrative enforcement procedures under Title VI. 45 CFR Sections 80.6-80.10 and Part 81. The Senate Report states this intent:

> It is the committee's understanding that the regulations promulgated by the Department of Health, Education and Welfare with respect to procedures, remedies and rights under Section under 504 conform with those promulgated under Title VI. Thus, (Section 505) codifies existing practice as a specific statutory requirement. S. Rep. No. 890, supra. at 19, (1978).

A review of the title VI enforcement regulations make it clear that the existing administrative practice of HEW was to investigate claims of discrimination against recipients of federal funds.

45 CFR 80.7 (1984) Conduct of Investigations

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may be himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent policies and practices of the *recipient*, the circumstances under which the possible noncompliance with this part occurred and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in Section 80.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this paragraph the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited*. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 601 of the Act or this part, or becasue he has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

> (Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d-1) (29 FR 16298, Dec. 4, 1964, as amended at 38 FR 17981, 17982, July 5, 1973) (emphasis provided).

The Title VI procedural regulations use a narrow program-specific focus only when referring to the termination of federal funds. *45 CFR 80.8(c) provides:*

> *Termination or refusal to grant or continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until 1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary menas, (2) there has been an express finding on the record after opportunity for hearing of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the expiration of 30 days after the Secretary has filed with the committee of the House and committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. *Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient to whom such a finding has been made and shall be limited in its effect to the particular program, in which such noncompliance has been so found* (emphasis added).

Hence, Section 505(a)(2) simply codifies an earlier intention, expressed by Congress in 1974 and implemented in 1977 by HEW to provide the same procedures for enforcement of Section 504 as had been established for Title VI. The Senate Committee recognized that the 1977 HEW Section 504 procedural regulations, accomplished the goal of insuring "administrative due process and administrative consistency within the federal government." Sen. Rep. No. 890 *supra.* at 19.

The above interpretation of Section 505 is wholly consistent with the overall intent of the other 1978 Amendments which was to expand the rehabilitation program, increase employment opportunitities and reaffirm equal opportunity guarantees. In fact, the declaration of purpose was amended in 1978 to make the "guarantee of equal opportunity" an explicit purpose of the Act. 29 U.S.C. 701 (Supp. III); See H.R. Rep. No. 95-1149, 95th Cong., 2d Sess. 37 (1978).

The broad ban on disability-based discrimination by recipients of federal funds was also evident in the debates in 1978 concerning the extension of Section 504 coverage to the federal government and its agencies. As originally enacted, Section 504 was not explicit as to its coverage of the federal agencies. The 1978 amendments added executive agencies and the United States Postal Service to the coverage of Section 504. As noted by Congressman Jim Jeffords:

> This amendment removes (the exemption for the federal government) and applies 504 to the federal government as well as State and local recipients of federal dollars . . . I think this is fair and appropriate and should go a long way toward developing a uniform and equitable national policy for elimination of discrimination. 124 Cong. Rec. H.13901 (1978) (emphasis provided).

In debate on a proposal by Senator James McClure to limit a court, in an action against the federal government, to the provision of equitable and affirmative action remedies that would be proportionate to actual damages, the recipient as a whole was again viewed as the entity responsible for ensuring equal opportunity. 124 Cong. Rec. 30576 (1978). Senator Alan Cranston, a sponsor of the 1978 Amendment, vehemently opposed the proposed amendment arguing that the federal government should be required to do at least that which private employers are required to do. He stated that:

> The amendment offered by the Senator from Idaho would create an unwise and unrealistic distinction with respect to employment between the obligations of the Federal government and the obligations of Federal contractors and grantees. Ironically, the senator's amendment would limit with a financial test the Federal government's obligation of being an equal opportunity employer. Federal contractors and grantees would--appropriately--continue to be required to equal opportunity employers.
> *Id.* at 30577-78.

In conclusion, the legislative history demonstrates Congress' intent to broadly ban discriminatory practices and policies, in federally funded programs or activities. Any remaining doubt is dispelled by a review of the HEW Section 504 regulations which were explicitly approved by Congress in the 1978 amendments.

B. The Administrative Regulations Under Section 504 Broadly Prohibit Discrimination by Programs and Activities Receiving Federal Financial Assistance

In April, 1976 President Gerald Ford issued Executive Order 11914 instructing the Department of Health, Education and Welfare to implement Section 504 and coordinate Section 504 implementation by all other federal departments and agencies which extend federal financial assistance. HEW issued its 504 implementing regulations on May 4, 1977 (45 CFR Part 84)[3]. Throughout this period, HEW evaluated over 850 public comments and the testimony from 32 public hearings. As the Supreme Court recognized in *Consolidated Rail Corporation v. Darrone, supra,* at 1255, "the responsible congressional committees participated in their (the regulations) formulation and both those committees and Congress itself endorsed the regulations in their final form." The HEW regulations have served as the model for all other agency regulations and follow the same framework.

The entire framework of the regulations revolves around a broad interpretation of program or activity.

For example:

> Subpart D applies to *preschool, elementary, secondary, and adult education programs and activities* that receive or benefit from Federal financial assitance *and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities* (emphasis provided).

After the *Grove City* decision, an elementary school "program" could be divided into separate narrow "programs," in direct contradiction to this regulation.

Following the above example, the regulations require a school system to educate "each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person (Section 104.34(a) emphasis provided). If the Grove City decision is interpreted to divide a school system into discrete and separate "programs" with some covered and others free to discriminate, the mainstreaming requirement of the regulations could be avoided. The child could be protected by Section 504 while participating in the special education program but be subject to discrimination, including exclusion from regular education programs if the regular classes did not directly receive federal funds. The regulations further require that "a recipient shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities." 34 CFR 104.37 (a)(1). Nonacademic and extracurricular activities are defined to include:

> counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment. 34 CFR 104.37 (a)(2).

Obviously this provision, so critical to full integration of disabled children in schools would be rendered meaningless if each separate activity would have to directly receive federal financial assistance to be covered by Section 504.

Likewise the regulations view post-secondary education recipients as a whole and as a sum of their component parts.

Section 104.41 provides:

> Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal assistance for the operation of such programs or activities.

Again, the regulations would be wholly ineffective if each "program" of a university was viewed separately with anti-discrimination coverage dependent on whether it directly received federal funds. For example, the regulations provide that "[a] recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others." 34 CFR 104.45(a). This provision would be useless after Grove City if the university demonstrated that no federal funds were used directly in its housing program. More fundamentally, students applying for admission in or enrolling in colleges which directly receive federal funds would be protected by Section 504 while those in colleges not directly funded would not, even though both colleges are part of a university which receives substantial federal assistance. A student pursuing a career in secondary education with a major in political science could be admitted to the School of Education because it receives federal funds but s/he could be precluded from taking courses in political science, because that college does not receive federal funds.

The regulations forbid this result.

34 CFR 104.43(c) states that:

> A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

The official HEW analysis of the regulations states why this section was deemed necessary.

> Paragraph (c) of this section prohibits a recipient from excluding qualified handicapped students from any course, course of study, or other part of its educational program or activity. This paragraph is designed to eliminate the practice of excluding handicapped persons from specific courses and from areas of concentration because of factors such as ambulatory difficulties of the student or assumptions by the recipient that no job in the area in question for a person with that handicap. 42 FR 22692 (May 4, 1977).

Hence, the hypotheticals referred to above are neither imaginary nor unreal.

The damaging results of *Grove City's* narrow "program or activity" restriction is particularly evident in the area of employment. Once again the regulations put the responsibility of providing equal employment opportunity and reasonable accommodation on the recipient of federal funds. In determining whether an accommodation is reasonable, the regulations set forth factors to be considered, such as the "*overall* size of the recipients program with respect to the number of employees, number and type of facilities and size of budget" and the "type . . . and structure of the recipient's work force." (34 CFR 104.12(c)(1) and (2)). The word "program" is clearly used in this context to refer to the recipient's overall operations.

The Supreme Court has recently resolved a five-year controversy among the Federal Circuit Courts on Section 504's employment coverage. In the 1978 amendments, Section 505 (a)(2) incorporated into Section 504 the rights, remedies and procedures available under Title VI. Several Circuit Courts[4] held that the incorporation of Title VI necessarily meant that the limitations imposed by Section 602 of Title VI applied to Section 504 as well. Section 602 limited employment coverage to only those instances where a primary purpose of the federal funds was to provide employment.

In a unanimous decision in Consolidated Rail Corp. v. Darrone, the Supreme Court held that Section 504 covered employment regardless of the purpose of the federal funds. The Court stated that HEW, "from the outset has interpreted that section to prohibit employment discrimination by all recipients of federal financial assistance, regardless of the primary objective of the aid." 104 S. Ct. at 1254. And as noted earlier, the Supreme Court stated that these regulations "particuluarly merit deference because Congress "participated in their formulation," and endorsed the regulations in their final form." Id at 1253.

The Darrone decision, of course, represented an important victory in disability civil rights law under Section 504. The irony is that the Grove City decision issued on the same day threatens to substantially curtail the effect of this victory. After Grove City, a disabled person's right to equal employment opportunity would be uneven at best. For example, a disabled professor could apply for employment in the English department of Grove City College and be flatly refused on the basis of disability. Equal employment opportunity would only be guaranteed in the student financial aid office. Likewise, a disabled person's right to be free of discrimination could turn on the particular program of the university for which employment is sought. All disabled law professors could be banned so long as the law school is not in direct receipt of federal funds. The very purpose of the 1973 Rehabilitation Act was to "promote and expand employment opportunities for handicapped individuals . . ." 87 Stat. 357, 29 U.S.C. Section 701(8). The legislative history is replete with statements stressing the importance of equal employment opportunity to the ultimate goal of the 1973 Rehabilitation Act--the integration of disabled citizens into the American mainstream.[5] The Court's narrow interpretation of "program or activity" is inconsistent with the intent of Congress recognized in Darrone to broadly prohibit employment discrimination by recipients of federal funds. The Section 504 regulations after much deliberation and explicit approval by Congress require recipients to assure nondiscrimination in all of their operations. Any other formulation of the anti-discrimination mandate would be unworkable and ineffective and would render the promise of equal citizenship for disabled Americans hollow indeed.

EROSION OF SECTION 504 CIVIL RIGHTS PROTECTIONS AFTER GROVE CITY

The devastating effects of the Grove City decision can already be seen in post-Grove City case law and federal agency action. Just two months after Grove City was decided, the U.S. Department of Education issued a memorandum directing all Regional Offices to reconsider the jurisdictional basis for all complaints filed under Title IX, Title VI and Section 504. Investigations were suspended in over 61 cases against colleges and universities. Thirteen of these were Section 504 claims of which 11 were claims of employment discrimination. As of February 1985, three of these cases have been closed. The remainder were reopened for reexamination for jurisdiction. Disabled people's claims of discrimination are being denied or significantly delayed. The grave impact which Grove City has on Federal agency monitoring and enforcement has just begun.

The courts have followed the lead of the executive branch in applying Grove City to narrow the protections guaranteed under Section 504. Ironically, the greatest cutbacks have occurred in employment coverage, the very area Congress specifically designed Section 504 to protect. For example, Meyerson v. State of Arizona, 740 F. 2d 684 (9th Cir. 1984), involved a deaf psychology professor who brought an employment discrimination claim against the University of Arizona. The psychology department received instructional and research grants through individual professors in the department. The Ninth Circuit, citing to Grove City, remanded the case and directed the court to look at whether the discrimination had occurred in a program or activity receiving Federal financial assistance.

The employee-plaintiff in Lemmo v. Wilson, 583 F. Supp. 557 (D.C. Colo. 1984) was barred from pursuing his employment discrimination claim against his employer who received CETA monies. Plaintiff was hearing impaired and had a loss of balance. The court required the plaintiff to show that the program or activity he was excluded from received or directly benefited from federal aid. Plaintiff could not show that CETA funds were used to finance the apprenticeship program in which he participated and therefore his claim was dismissed.

In another case, a school teacher claimed that she was being discriminated against by her school district. Bradford v. Iron County C-4 School District, 36 FEP Cases 1296 (E.D. Mo. 1984). The district received unrestricted federal funds which were placed in the general funds. Even though the court allowed the case to proceed, the court left open the possibility that the defendant-employer could avoid liability if it could show that the teacher's salary was not paid from the same source as the unrestricted funds.

The employment protections of many disabled citizens are threatened by court decisions such as these. Employees are being required to show that their salaries are actually being funded with federal dollars; if they cannot, they are being turned away by the courts. Section 504 no longer guarantees that federally funded employers will not discriminate.

The negative effects of Grove City do not, however, stop with employment cases. Jacobson v. Delta Airlines, 742 F. 2d

1202 (9th Cir, 1984) involved the refusal by a large airline to board a passenger with cerebral palsy. The plaintiff challenged the airline's requirement that he sign a "medical release form" as a condition of flying on the basis that the requirement was discriminatory. The court held that the policy was indeed discriminatory but that Section 504 was inapplicable because the discrimination did not take place in a "program or activity receiving federal financial assistance." The airline did receive federal financial assistance in the form of subsidies for small community services; however, the court held that such payments subjected only the small community service program to the civil rights laws. (For contrary holding, see Paralyzed Veterans of America et al. v. CAB No. 83-1055 (D.C. Cir. Jan. 18, 1985).

The Congressional mandate which provided broad anti-discrimination protection to 36 million Americans is being destroyed by the Courts and the federal agencies charged with enforcement. Court and agency decisions such as those cited above require plaintiffs to trace the federal dollars to the discriminatory act. Federal grantees will be free to manipulate their expenditures so as to minimize compliance or avoid civil rights coverage. Clearly, such a complete undermining of the purpose of the civil rights acts must be reversed.

THE CIVIL RIGHTS ACT OF 1985 IS NECESSARY TO REAFFIRM CONGRESSIONAL INTENT THAT SECTION 504 ASSURE EQUAL OPPORTUNITY BY BROADLY PROHIBITING DISCRIMINATION IN ALL PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Section 504, more than any other piece of legislation, is looked upon by disabled Americans as the hallmark of this nation's commitment to full integration and equal opportunity. Congress extended a promise of nondiscrimination, as yet unfulfilled. However, in the ten short years since its enactment Section 504 has opened doors which the Grove City decision threatens to close once more. The benefits of nondiscrimination are realized not only by disabled citizens, the direct beneficiaries of Section 504, but also by the society as a whole. Equal opportunity is not only a moral and legal imperative; it is a good investment in the future.

For example, the Supreme Court recently recognized in Consolidated Rail Corporation v. Darrone, that Congress was acutely aware that a strong national policy of anti-discrimination was necessary to open employment opportunitites to disabled Americans. Disabled people face staggering unemployment. The rate of unemployment has currently been estimated to be between 50 and 75% by the President's Committee on Employment of the Handicapped.[6] Furthermore, studies indicate that only in a tiny percentage of cases is inability to perform a regular, full-time job the reason a disabled person is not employed.[7] A comparison between the studies on employer's attitudes and the studies on the actual performance of disabled workers demonstrates a large discrepancy between the perceived incapacity and the actual incapacity of disabled applicants and workers.[8]

The cost of employment discrimination is tremendous to disabled individuals and to society at large. In a major study commissioned by the Office of Civil Rights, HEW, it was estimated that eliminating discrimination against handicapped people in HEW-funded grant programs would yield $1 billion annually in increased employment and earnings for disabled people.[9]

In addition to increasing the gross national product, it has been estimated that such an earnings increase by handicapped workers would result in some $58 million in additional tax revenues to Federal, State and local governments.[10]

Similarly, studies indicate that equal educational opportunities yield substantial economic benefits by reducing the need for institutionalization, increasing future earnings, and decreasing the need for public assistance. For example, in 1976 HEW estimated that expansion of special education services pursuant to the requirements of Section 504 of the Rehabilitation Act would result in an annual increase of $1.5 billion in adulthood earnings of the additional handicapped children served.[11] The results of equal access to higher education are similar. One study estimated the rate of return on investments in higher education for disabled students to be between 14 and 17 percent, about the same or a little higher than the return for nondisabled students.[12] However, the estimated rate of return for society was shown to be 31 and 40 percent, more than twice the social return on investment in the education of nondisabled.[13] The reason for the discrepancy is that a college education not only expands job opportunities but also often marks the difference between a life of unemployment and dependency and one of economic and social independence.[14]

A thorough review of the benefits of nondiscrimination in all areas covered by Section 504 is presented in a recent publication of the United States Commission on Civil Rights, Accommodating the Spectrum of Individual Abilities, Clearinghouse Publication 81, September 1983.

Congress' well-documented intention in 1973 to extend the guarantee of equal opportunity to disabled Americans by assuring that federal funds do not contribute to or promote discrimination would be drastically curtailed by the Grove City decision. If an agency provides funds to an institution it should have the right to investigate any claims of discrimination. The appropriate remedy should discrimination be found and conciliation efforts fail is a different matter. The agencies' power to terminate or discontinue assistance is tailored to the particular circumstances involved in an individual case. If termination of federal funds is not an appropriate remedy because the assistance does not support the discrimination, the agency may resort to "other means authorized by law," such as referral to the Attorney General to bring a suit to address the actual discrimination involved in the case. In addition, the claimant could pursue his/her discrimination claim through a private right of action in court. Most often in the case of Section 504, agency intervention results in needed technical assistance on the most efficient means of complying with the law and results in voluntary compliance. Termination of federal funds has never been ordered by any administrative agency but its potential use continues to play a vital role in maintaining the strength of Section 504 enforcement.

Once again, disabled Americans look to Congress to reaffirm the basic principles of integration and equal opportunity through a clear and straightforward clarification of its original intent. We are confident that this nation's commitment to disabled citizens which was firmly established in 1973 will not be abandoned.

[1] Prior to the inclusion of Section 504 in the Rehabilitation Act of 1973, attempts were made to include it as an amendment to Title VI of the Civil Rights Act of 1964. H.R. Rep. No. 12154, 92nd Cong., 1st Sess., 117 Cong. Rec. 45945, 45974-75 (1971) (introduces by Rep. Vanick); S. 3044, 92nd Cong., 2d Sess., 118 Cong. Rec. 525-26 (1972) (introduced by Senators Humphrey and Percy). The sponsors indicated a broad-based policy of nondiscrimination. See, *eg.* statement by Senator Percy:

> This landmark legislation, introduced by Congressman Vanik in the House, would prohibit discrimination against the mentally and physically handicapped in programs which receive federal aid.
>
> The amendment we are introducing today would . . . (guarantee) the handicapped equal opportunity to education, job training, productive work, due process of law, a decent standard of living, and protection from exploitation, abuse and degradation.
>
> 118 Cong. Rec. 526 (1972).

The Supreme Court in *Alexander v. Choate*, 53 U.S.L.W. 4072 (Jan. 8, 1985), acknowledged the painstaking efforts of Congress to sponsor comprehensive legislation in redressing the "shameful oversights" and "glaring neglect" visited upon the handicapped. Referring to the attempt to amend Title VI, it noted that "...the predecessor to Section 504 is a primary signpost on the road toward interpreting the legislative history of Section 504". *Id.* at 4074, n.13.

[2] The 1978 amendments also effected the following: (1) broadened and strengthened the powers of the Architectural and Transportation Barriers Compliance Board; (2) expanded the coverage of Section 504 to include federal agencies and departments; (3) allowed reasonable attorney's fees to the prevailing party in actions brought under Title V; (4) clarified the term, "handicapped individual," as it pertains to the employment of drug addicts and alcoholics; and (5) made available remedies of Title VII for violations of Section 501.

[3] When HEW was split into the Departments of Education and Health and Human Services the regulations were recodified but unchanged. The Department of Education 504 regulations now appear at 34 CFR Part 104.

[4] *United States v. Cabrini Medical Center*, 689 F2d 908 (2d Cir. 1981); *Trageser v. Libbie Rehabilitation Center*, 590 F2d 87 (4th Cir. 1978), *cert. denied*, 442 U.S. 947 (1979); *Carmi v. Metropolitan St. Louis Sewer District*, 620 F.2d 672 (8th Cir.), *cert. denied*, 449 U.S. 892 (1980); *Scanlon v. Atascadero State Hospital*, 677 F.2d 1271 (9th Cir. 1982). *Contra: LeStrange v. Consolidated Rail Corp.* 687 F.2d 767 (3d. Cir. 1982), *affirmed*

104 S. Ct. 1248 (1984); *Jones v. MARTA*, 681 F.2d 1376 (11th Cir. 1982).

[5] Such problems as unfounded discrimination in employment and . . . difficulties of access to places of work . . . were voiced repeatedly in committee. . . . (D)iscrimination in placement, hiring and advancement continue(s) to limit the vocational rehabilitation program's ability to effect successful rehabilitations. (119) Cong. Rec. 5882 (1973) (Craston). Too many handicapped Americans . . . lack jobs, and too many are underemployed . . . .

(I)f we are to assure that all handicapped persons may participate fully in the rewards made possible by the vocational rehabilitation program, we must devote more of our energy toward the elimination of the most disgraceful barrier of all--discrimination. 119 Cong. Rec. 24587 (1973) (Taft)

[6] Handicapped Rights and Regulations, Vol. 4, No. 7 (April 5, 1983), p. 49

[7] See, e.g. Berkeley Planning Associates, *Final Report: Analysis of Policies of Private Employers Toward the Disabled* (prepared under HHS contract) (Nov. 1981), p. 413

[8] See Brief of Amici Curiae American Council of the Blind and Sixty Two Other National, State and Local Organizations Dedicated to Promoting the Civil Rights of Disabled Persons in *Consolidated Rail Corporation v. LeStrange (Darrone)*, in the Supreme Court of the U.S., Oct. Term, 1982.

[9] *Discrimination Against Handicapped Persons: The Costs, Benefits and Inflationary Impact of Implementing Section 504 of the Rehabilitation Act of 1973 Covering Recipients of HEW Financial Assistance*, 41 Fed. Reg. 20, 232 (1976). *See*, Note, "Mending the Rehabilitation Act of 1973," p. 727.

[10] S. Rep. No. 318, 93d Cong., 1st Sess., *reprinted in* 1973 U.S. Code Cong. & Ad. News 2076, 2086; 119 Cong. Rec. 24,586 (1973) (Statement of Sen. Cranston). These 1973 estimates were based upon a minimum 5 percent of income tax rate. By 1978 the estimated rate had already risen to 6 percent. *See* H.R. Rep. No. 1149, 95th Cong. 2d Sess., *reprinted in* 1978 U.S. Code Cong. & Ad. News 7320.

[11] *Discrimination Against Handicapped Persons: The Cost, Benefits and Inflationary Impacts of Implementing Section 504 of the Rehabilitation Act of 1973 Covering Recipients of HEW Financial Assistance, 41 FR 20365 (1976).*
See also Ronald Conley, *The Economics of Mental Retardation* (Baltimore: John Hopkins Univ. Press, 1973), pp. 296-300; L.J. Schweinhart and D.P. Weikart, "Young Children Grow Up: The Effects of the Perry Preschool Program on Youth Through Age 15" (Ypsilanti, Minn.: High Scope Educational Research Foundation, 1980). *See also* Discrimination Against Handicapped Persons Cost Study, 41 FR 20312, 20338-60 (1976).

[12] Charles H. Blake, Michael J. Cleary, Louis Quatrano. The Psychological and Economic Impact of Wright State University's Handicapped Student Services Program, Wright State University, Dayton, Ohio 1977.

[13] *Id.* pp. 58-59

[14] For a review of the relatively insignificant costs in accommodating disabled student in higher education see, Daniel Finnegan, *Disabling the Disabled: Discrimination in Higher Education*, Lawrence Hall of Science, University of California at Berkeley, pp. 13-14.

CIVIL RIGHTS RESTORATION ACT OF 1985

WEDNESDAY, MARCH 27, 1985

HOUSE OF REPRESENTATIVES, COMMITTEE ON EDUCATION AND LABOR, AND SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS, COMMITTEE ON THE JUDICIARY,
Washington, DC.

The joint committee met, pursuant to call, at 9:30 a.m., in room 2175, Rayburn House Office Building, Hon. Augustus F. Hawkins (chairman of the full committee) presiding.

Members present from the full Committee on Education and Labor: Representatives Hawkins, Clay, Kildee, Martinez, Hayes, Perkins, Bruce, Jeffords, Petri, Bartlett, McKernan, Armey, and Fawell.

Members present from the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary: Representatives Edwards, Conyers, Sensenbrenner, and DeWine.

Staff present from the full Committee on Education and Labor: Edmund Cooke, majority counsel; Phil Kiko, minority counsel; and Pat Morrissey, minority legislative associate.

The **CHAIRMAN**. The joint hearing of the Committee on Education and Labor and the Subcommittee of the Judiciary is called to order.

We convene the hearing this morning to continue the examination of H.R. 700, the Civil Rights Restoration Act of 1985.

I think all of the members, as well as the audience, are probably familiar with the purpose of the hearing and the Chair will not go through the process of repeating what we have repeated throughout these hearings, as well as in the field hearings.

If any of the members of the committee would like to make a statement, the Chair will certainly recognize them.

Mr. Sensenbrenner.

Mr. **SENSENBRENNER**. Thank you, Mr. Chairman.

I have attended most of the hearings, both here and in the field, on the Civil Rights Restoration Act of 1985. At the beginning of each of the hearings I said that it was really encumbent upon the supporters of this legislation to demonstrate that it did not go beyond restoring the law to its status prior to the *Grove City* case.

Last year's bill was marketed that way in the House, passed overwhelmingly, and over in the other body, when it was demonstrated that it did go beyond the law prior to *Grove City,* it ended up being filibustered and defeated in the Senate.

I must express a great deal of frustration in that most of the supporters of this legislation really have not addressed themselves to this question. Rather, they have talked about the need for adequate civil rights enforcement, which all of us support.

We are here today because Congress was sloppy 13 years ago in drafting title IX, thus allowing the Supreme Court of the United States to misinterpret what was conceded to be the intent of Congress in its coverage when it rendered the decision in *Grove City*.

I hope that we don't repeat the same mistake with a similar sloppy drafting job, leaving the courts wide license to interpret or misinterpret the intent of Congress, because I fear that if we do that we will be back here in this room another 10 years from now with another patch-up job as a result of a court decision.

So, I am hoping that the supporters of the bill would answer three specific questions.

First, why is the coverage in the private sector far more broad than the coverage in the public sector?

Second, what is the need for the change in the pinpointing legislation proposed by this bill?

And, third, whether the bill will actually be counterproductive in achieving its stated goals in that various educational institutions or entities in the private sector will simply refuse to accept Federal funds and thus deny either choice in education or job training programs, for example, simply because they don't want to get involved in the statutory coverage and all of the paperwork that will result from this coverage that is proposed under this bill?

I would hope that we will have some better testimony from the supporters of the bill today than we have had in the past.

I thank you.

Mr. **Jeffords**. Will the gentleman yield?

Mr. **Sensenbrenner**. I yield to the gentleman from Vermont.

Mr. **Jeffords**. I would like to say that I agree with much of what the gentleman says and that I would also hope that the panelists, if as I believe they have to agree with some of the criticisms that you have, and so the bill may go further, is that we could get some constructive suggestions on how to amend the bill, if they believe such problems do exist, such that we can prevent the problems that you are talking about.

I don't think I have heard anyone suggest any changes that might take care of some of the problems of going beyond the intent of what we believe we are doing here, and I would just add that hope, that we could get some constructive suggestions.

Thank you.

Mr. **Sensenbrenner**. I thank the gentleman and yield back the balance of my time.

The **Chairman**. Well, I thank the gentlemen. I believe we have witnesses who are very capable of responding to the suggestions that have been made. I think we have listened to witnesses across this country who have ably answered the questions.

The Chair will simply ask that the statement of the Chair be entered in the record at this point and not take the time to respond to certain suggestions that have been made. I think they have been amply answered, and I am sure that the witnesses will expand on the points this morning.

The **Chairman**. The first panel will consist of Mr. Mark de Bernado, manager of labor law of the U.S. Chamber of Commerce; Mr. William McEwen, of the National Association of Manufacturers; Mr. Tom Wenning, of the National Grocers Association; and Ms. Margot Polivy, Esq., and Mr. William Taylor of the Center for National Policy Review.

Will those witnesses please come forward and be seated at the witness table? And we will call on them in the order in which they have been announced.

Mr. de Bernado, I understand, is not present. Is that true? Certainly he is not going to answer because I don't think he is present. But the rest of the witnesses, we will call on them then in the order in which they were announced, beginning with Mr. William McEwen, of the National Association of Manufacturers.

Mr. McEwen.

STATEMENTS OF WILLIAM McEWEN, NATIONAL ASSOCIATION OF MANUFACTURERS; TOM WENNING, NATIONAL GROCERS ASSOCIATION, AND MARGOT POLIVY, ESQ., RENOUF & POLIVY

Mr. **McEwen**. Mr. Chairman and members of the committee, I am William McEwen, director of equal opportunity affairs with Monsanto Co. in St. Louis.

I am testifying today on behalf of the National Association of Manufacturers as chairman of the human resources steering group.

Accompanying me today is Jim Conway, associate director of NAM's human resources and equal opportunity committee.

The National Association of Manufacturers is a voluntary business association of over 13,000 corporations, large and small, located in every State.

The **Chairman**. Mr. McEwen, if I may interrupt, I see that much of the testimony of the witnesses is lengthy. The committee has a tremendous number of witnesses. This is not addressed to you personally, obviously, Mr. McEwen, but it is an announcement I overlooked making at the beginning.

We would appreciate if the witnesses would confine themselves to the highlight of their testimony. We will in every instance insert into the record the full text of the statements, so that it will leave some time for questions at the end.

So, we would appreciate the witnesses confining themselves to their requested time and leave some opportunity for questioning at the end of their statements. The statements will, however, appear in the record as they have been presented.

Thank you, and we apologize for this interruption, Mr. McEwen.

Mr. **Clay**. Mr. Chairman.

The **Chairman**. Mr. Clay.

Mr. **Clay**. May I interrupt just for a second? I just want to welcome my friend and constituent, Bill McEwen, to the committee this morning, and apologize in advance. I will have to leave in a few minutes to go chair a Subcommittee on the Indiana Election Task Force. But I want to welcome him to the committee.

The **Chairman**. Thank you. You are doubly welcome, then, Mr. McEwen.

Mr. McEwen. All right. I thank you for saying that, because I didn't want to read all of this anyway.

Initially, I would like to state that the NAM opposes any discrimination in whatever form or however manifested against any persons on the basis of race, sex, color, national origin, handicap, religion, or age, and we remain fully committed to the goal of equal opportunity for all.

Furthermore, we support the efforts to remedy the title IX program-specific limitations as decided in the *Grove City College* case.

However, NAM is concerned that House Resolution 700, as written, would do far more than restore the status quo for public and private employers prior to *Grove City*.

We believe this legislation could have broad ramifications, especially for our smaller members, subjecting the small employers who have very minimal Government contact to burdensome layers of paperwork and enforcement by any number of Government entities.

The language of any bill designed to address the *Grove City* decision should be clear and should leave no room for multiple interpretations.

The NAM, as a body, believes that Senator Robert Dole has introduced a bill, S. 272, which addresses the concerns raised by *Grove City* and we hope that you will consider it as a better alternative, one that merely restores the state of the law prior to *Grove City* and does not break new ground in antidiscrimination legislation.

Now, our problems with the *Grove City* v. *Bell* case has been stated by other people and I won't go into it other than just saying that in one fell swoop the Supreme Court expanded the concept of a recipient of Federal aid and limited title IX to application to the specific programs which receive such aid, and we don't believe that that is in the best interest of our country.

We are concerned with two areas that I will try to highlight and then I will stop.

The Civil Rights Restoration Act of 1985 proposes to amend not only title IX but also title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Thus, though *Grove City* constituted a program-specific finding in relation to title IX only, this bill amends several other discrimination statutes and these changes would impact not only on the educational institutions but on industry and non-Federal Government entities as well.

Unlike the Civil Rights Act of 1984 considered in the 98th Congress, the Civil Rights Restoration Act of 1985 does not seek to insert the word "recipient" into the operative antidiscrimination bans of the four crosscutting civil rights statutes.

Instead, the latter bill seeks to define "program or activity," which is a phrase already contained in each of the statutes. It does so in section 909 by stating that "program or activity" means all of the operation of "local and State governments, educational institutions and corporations to which any part is extended Federal financial assistance."

The bill reflects no indication that the term "recipient" has any role to play in the enforcement of these statutes. However, the bill's definition of program or activity also includes a catchall paragraph, and this catchall provision provides for coverage of any conceivable entity in a manner similar to coverage of all entities.

Now, our concerns on statutory coverage focus on the practical implications that this legislation will have on business, both large and small.

For instance, would a small business presently not covered under section 504 of the Rehabilitation Act of 1973 be subject to statutory coverage for participation in the Job Training and Partnership Program?

Most of us are lobbying very hard to have our companies involved in JTPA and we feel that this bill, if not cleared up, will tend to inhibit smaller companies from participating.

The extent of coverage under the Civil Rights Restoration Act of 1985 is questionable, as well. If a manufacturer receives a Federal research grant at one plantsite, would all the other plants and subsidiaries be covered by all four statutes? A logical conclusion from a reading of *Grove City* and the House legislation is "yes."

Examples of unanswered questions given during deliberation of the Civil Rights Act of 1984 are appropriate for consideration here as well.

For instance, what of the grocer who accepts food stamps or the pharmacist who accepts Medicare payments? Are they to be subject to statutory coverage for this activity?

Again, there may be a reluctance to participate in such programs if the result is regulation of private enterprise.

Finally, in this part of my statement we are concerned with the question of multiple agency enforcement that is created by this bill.

Employers accused of discrimination are currently subject to investigation and litigation in several different forums: the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs, Federal courts, State courts, other State agencies, private suits, and arbitration.

This pending legislation would add greatly to the bureaucratic load that we in industry must bear now. The bill would retain enforcement jurisdiction in all current agencies, with which we have no problem, but also it would give enforcement power to any Federal agency which provides Federal funds.

As an aside here, this goes back to prior to 1978 before the OSECP consolidated all its agencies, when we had 11 agencies trying to enforce an Executive order, and we know that that resulted in a lot of paperwork and chaos.

I would like to conclude and limit my statement to the statement that the National Association of Manufacturers supports the effort to eliminate discrimination in our society.

In that effort, we agree that Federal discrimination statutes must be promulgated and vigorously enforced in a manner that will ensure civil rights for all citizens.

In keeping with this philosophy, NAM supports the legislative efforts to reverse the program-specific findings of the Supreme Court in the *Grove City* case as it applies to educational institutions.

The NAM believes that the goals of this Congress should be enactment of a law that would reverse *Grove City* without adding costly and unnecessary Federal involvement in the private sector.

Senator Dole's bill, the Civil Rights Amendment Act of 1985, achieves this goal, and unlike the Civil Rights Restoration Act of 1985, it reverses *Grove City* without adding any layers of bureaucracy upon employers and local governments.

We are concerned that House Resolution 700 may provide a disincentive for participation in Federal programs such as the Job Training Partnership Act because of fear of costly Federal regulation of private enterprise, and we don't think that that is in the best interest of the country.

The Dole bill is straightforward and contains no such effects and, perhaps more importantly from a civil rights point of view, specifically provides that *Grove City* shall not be used as a precedent in future interpretation of discrimination statutes, which we were concerned about.

The NAM supports the Civil Rights Amendment Act of 1985 as an effective compromise solution to the *Grove City* issue.

On behalf of NAM, I would like to thank the Education and Labor Committee and the Subcommittee on Civil and Constitutional Rights for allowing us to express our views on this subject.

[The prepared statement of William S. McEwen follows:]

TESTIMONY OF

WILLIAM S. McEWEN
DIRECTOR, EQUAL OPPORTUNITY AFFAIRS
MONSANTO COMPANY

ON BEHALF OF

THE NATIONAL ASSOCIATION OF MANUFACTURERS

ON

GROVE CITY LEGISLATION

BEFORE

THE COMMITTEE ON EDUCATION AND LABOR
AND
THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY

MARCH 27, 1985

INTRODUCTION

Mr. Chairman and members of the Committee, I am William McEwen, Director of Equal Opportunity Affairs with Monsanto, Inc. I am testifying today on behalf of the National Association of Manufacturers as Chairman of the Human Resources Steering Group for NAM. Accompanying me today is Jim Conway, Associate Director of NAM's Human Resources and Equal Opportunity Committee. NAM is an organization of over 13,600 corporations of every size and industrial classification located in every state. Our members employ 85 percent of the workers in manufacturing employment and produce over 80 percent of the nation's manufactured goods. We very much appreciate this opportunity to express our opinion before this Committee on the various bills on the Grove City issue that are being considered in this Congress.

Initially, we would like to state that the National Association of Manufacturers opposes any discrimination, in whatever form or however manifested, against persons on the basis of race, sex, color, national origin, handicaps, religion or age. We remain fully committed to the goal of equal opportunity for all. Furthermore, we support efforts to remedy the Title IX program-specific limitations decided in the case of Grove City College v. Bell. However, NAM is concerned that H.R.700, as written, would do far more than restore the status quo for public and private employers prior to Grove City. We believe this legislation could have broad ramifications, subjecting employers who have very minimal government contact to burdensome layers of paperwork and enforcement by any number of government entities. The language of any bill designed to address the Grove City decision should be clear, and leave no room for multiple interpretations.

NAM believes that Senator Robert Dole has introduced a bill, S.272, which addresses the concerns raised by Grove City. We hope you will consider it as a better alternative - one that merely restores the state of the law prior to Grove City and does not break new ground in anti-discrimination legislation.

I. Background

On February 28, 1984, the Supreme Court decided a case which is the basis for this hearing.

In Grove City College v. Bell, the Supreme Court reached a two-prong conclusion. First, the Court held 9-0 that scholarship aid to students who attend private colleges constitutes federal aid to those colleges. The Court also ruled 6-2 that "any education program or activity receiving federal financial assistance" (the language of Title IX of the 1972 Education Act) means only the specific program receiving the assistance and not the entire institution. Thus, in one large brush, the Supreme Court expanded the concept of a "recipient" of federal aid and limited Title IX's application to the specific program which receives such aid.

It is the program-specific finding of the Supreme Court in the Grove City decision that legislation introduced in this Congress attempts to redress.

II. Legislative Initiatives

A. The Civil Rights Restoration Act of 1985

Two identical bills entitled "The Civil Rights Restoration Act of 1985" have been introduced in the 99th Congress. Senator Edward Kennedy has introduced S.431 and Representative Augustus Hawkins has introduced H.R.700.

Paragraph (2) of Section (2) of these bills state the legislative purpose is to "restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws previously administered." Thus, in theory, "The Civil Rights Restoration Act of 1985" is meant solely to reverse the program-specific finding of Grove City and restore the status quo in the interpretation of Title IX. Upon examining this measure, however, it may be said that, without further clarification, there could be sweeping changes in the structure of our anti-discrimination laws if this bill is enacted. Further study and discussion is needed to assess the impact of such broad statutory changes on business and state and local governments. An examination of the bill reveals several causes for concern.

1. Statutory Amendments:

The Civil Rights Restoration Act of 1985 proposes to amend not only Title IX, but also Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. Thus, though Grove City constituted a program-specific finding in relation to Title IX only, this bill amends several other discrimination statutes. These changes would impact not only on educational institutions, but on industry and non-federal government entities as well.

2. Statutory Coverage:

Unlike the "Civil Rights Act of 1984" (H.R.5490, S.2568) considered in the 98th Congress, the Civil Rights Restoration Act of 1985 does not seek to insert the word "recipient" into the operative anti-discrimination bans of the four cross-cutting civil rights statutes. Instead, the latter bill seeks to define "program or activity" -- a phrase already contained in each of the statutes. It does so (in Section 909) by stating that "program or activity" means all of the operations of" local and state governments, educational institutions and corporations to which any part is extended federal financial assistance." (emphasis added) The bill reflects no indication that the term "recipient" has any role to play in the enforcement of these statutes. However, the bill's definition of "program or activity" also includes a "catch-all" paragraph (paragraph 4). This catch-all provision provides for coverage of any conceivable entity in manner similar to coverage of other entities.

There is a resulting well-found confusion concerning the standards to be used in determining if someone is participating in a program or activity which is receiving federal financial assistance. Questions of importance yet to be satisfactorily answered in this regard are:

a. Are the various federal agency definitions of "recipient" of federal assistance to be disregarded in the enforcement of these statutes?

b. Are ultimate beneficiaries of federal aid, excluded in most agency regulations, to be covered under all four statutes?

c. If a plant or local government participates in a program or activity receiving federal assistance, does statutory coverage extend to corporate headquarters and state governments?

Our concerns on statutory coverage focus on the practical implications that this legislation may have on business both large and small. Many questions in this regard remain unanswered.

For instance, would a small business, presently not covered under Section 504 of the Rehabilitation Act of 1973, be subject to statutory coverage for participation in the Job Training Partnership Program? Without clarifications, small business persons will be reluctant to participate in such a program.

The extent of coverage under The Civil Rights Restoration Act of 1985 is questionable as well. If a manufacturer receives a federal research grant at one plant site would all of the other plants and subsidiaries be covered by all four statutes? A logical conclusion from a reading of *Grove City* and the House, legislation is "yes."

Examples of unanswered questions given during deliberation of The Civil Rights Act of 1984 are appropriate for consideration here as well. What of the grocer who accepts food stamps or the pharmacist who accepts medicare payments? Are they to be subject to statutory coverage for this activity? Again, there may be a reluctance to participate in such programs if the result is regulation of private enterprise.

3. Statutory Enforcement:

Another concern has to do with multiple agency enforcement created by this bill. Employers accused of discrimination are already subject to investigation by litigation in several different forums: The Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs, federal courts, state agencies, state private suits and arbitrations. The pending legislation would add greatly to the bureaucratic load companies must bear. The bill would retain enforcement jurisdiction in all current agencies, but also give enforcement power to any federal agency which provides federal funds.

If one or more parts of an employer's operation received federal aid, an enumerable number of federal agencies could have jurisdiction over all the operations of the company. Further, the company might also find itself adrift in a sea of reporting requirements and compliance reviews. This makes no sense at a time when government is striving toward regulatory reform.

The problems created by multiple enforcement agencies do not end with the paperwork. One important consideration is that many of the agencies that will have to make determinations under this bill lack expertise in employment and civil rights laws. Lack of consistency is bound to be the hallmark of diffuse enforcement. This lack of consistency could result in confused legal standards and agency enforcement practices that the employer has depended on from the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Program.

With any number of agencies to choose from, individuals will undoubtedly begin forum shopping. An individual may file the same complaint with numerous agencies, all with equal power of enforcement. This would be costly to the government and unreasonably burdensome to employers. Furthermore, the cases of discrimination may, in appropriate situations, still be referred to the Justice Department, which may sue in federal courts. It is obvious that a litigant would seek to bring his claim before the most sympathetic forum of the many available.

The proliferation of lawsuits and complaints resulting from this provision cannot be overstated. An employer would be subject to reporting requirements, compliance reviews and enforcement from several federal agencies. There would be an erosion of legal standards and precedent upon which an employer may rely. Further, with the great availability of tribunals, there will be an inordinate opportunity to file duplicate claims and forum shop.

B. The Civil Rights Amendment Act of 1985

Another proposal on the Grove City issue, "The Civil Rights Amendment Act of 1985" (S.272), introduced by Senate Majority Leader Robert Dole (R-KS), represents a sensible and effective compromise on the matter.

The approach of this bill is simple. It would amend Title IX, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Age of 1975 to make clear that where federal financial assistance is extended to any educational program of an academic institution, the institution itself is to be considered to be covered by all four statutes.

Senator Dole's bill thus reverses the program-specific application of Title IX as decided by the Supreme Court in Grove City. S.272 also amends Title VI, Section 504 and the Age Discrimination Act so that those statutes are applied on an institution-wide basis to those educational institutions which receive federal financial assistance. The result of this measure is that all four discrimination statutes are to be applied to an educational entity on an instituion-wide and not program-specific basis.

Many who supported "The Civil Rights Act of 1984" and who now support "The Civil Rights Restoration Act of 1985" have advocated major changes in our discrimination laws because they fear that the Grove City decision will serve as precedent in the interpretation of those statutes. The Dole bill addresses these concerns. The bill contains a "grandfather clause" which specifically states that the application of other discrimination statutes "shall be construed without reference to or consideration of" the Supreme Court's decision in Grove City.

S.272 provides an effective response to those who are concerned that the Grove City decision might lead to an erosion of our discrimination laws. It reverses the program-specific finding of the Supreme Court, and states that all four discrimination statutes must be applied on an institution-wide basis at educational entities receiving federal financial assistance. It provides that Grove City will not be used as precedent in the future interpretation of the four discrimination statutes. Finally, it achieves these goals without unnecessary and costly additional federal regulation of the private sector.

III. Conclusion

The National Association of Manufacturers supports the effort to eliminate discrimination in our society. In that effort, we agree that federal discrimination statutes be promulgated and vigorously enforced in a manner that will insure civil rights for all citizens. In keeping with this philosophy, NAM supports the legislative efforts to reverse the program-specific findings of the Supreme Court in the Grove City case, as it applies to education institutions.

The NAM believes the goal of this Congress should be enactment of a law that would reverse Grove City without adding costly and unnecessary federal involvement in the private sector. Senator Dole's bill, "The Civil Rights Amendment Act of 1985" (S.272), achieves this goal. Unlike "The Civil Rights Restoration Act of 1985" (H.R.700, S.431), it reverses Grove City without adding layers of bureaucracy upon employers and local governments. H.R.700 and S.431 may provide a disincentive for participation in federal programs such as the Job Training Partnership Act because of fear of costly federal regulation of private enterprise. The Dole bill is straight forward and contains no such hidden effects and, perhaps most importantly from a civil rights point of view, specifically provides that Grove City shall not be used as precedent in future interpretation of discrimination statutes. The NAM supports the Civil Rights Amendment Act of 1985 as an effective compromise solution to the Grove City issue.

On behalf of the NAM, I would like to thank the Education and Labor Committee and the Subcommittee on Civil & Constitutional Rights for allowing us to express our views on this important subject.

The CHAIRMAN. Thank you, Mr. McEwen.

The next witness is Mr. Tom Wenning, of the National Grocers Association.

Mr. WENNING. Thank you, Mr. Chairman.

My name is Thomas F. Wenning, and I am executive vice president and general counsel for the National Grocers Association.

I want to thank this committee for the number of hearings and the time it has devoted to this important issue, and I would especially like to thank the staff, both on the majority and the minority side, for their willingness to discuss this issue and convey their thoughts with us.

The National Grocers Association is comprised of the small business sector of the food retail and wholesale distribution industry. Our members include 1,700 independent food retailers, 62 wholesale distributors serving 28,000 stores nationwide, as well as 58 State and local food associations.

Our members form a significant part of the largest segment of the U.S. retail sector.

I will not spend a great deal of time on the background of the legislation. You have been over this many times. Other than suffice it to say that there are two distinct statutory approaches that are now before the 99th Congress.

In recognition of last year's criticism of redefinition of the word "recipient", H.R. 700 seeks to now redefine "program or activity" and no longer attempts to redefine the recipient, whereas on the other hand the Dole bill would amend all four laws to make clear that where Federal assistance is extended to an educational program or activity the institution itself is covered under the definition of "program".

The bill also adds a grandfather clause to each law to ensure that *Grove City* does not serve as a precedent for judicial interpretation of civil rights coverage in other areas.

The National Grocers Association is acutely conscious of the complexities which surround this issue and the importance of obtaining a proper and responsible governmental regulatory approach.

From the outset, NGA supports legislation that would return the law to pre-*Grove City* as to deal with discrimination resulting from Federal assistance or activities in education institutions.

NGA believes this can best be accomplished by changing the effect of *Grove City* on educational institutions and treating the *Grove City* decision as nonexistent for other entities and return to prior law.

In our analysis of H.R. 700, we recognize that the bill is designed to restore the previous application of the original four statutes to pre-*Grove City* position and not create any new obligations for those who receive Federal assistance.

Our problem, however, is with the definition of the term "program or activity" within the bill to set out the type of entities to which the Federal law would ultimately apply.

Unfortunately, we feel that the language utilized is often vague and open-ended so that it has raised unanswered questions and concerns for not only NGA retail grocers but numerous other unsanctioned institutions.

In specific, subsection (3) in each of the provisions to amend each of the laws would subject all the operations of entire corporations, partnerships or other private organizations to coverage if any of their parts are extended Federal aid.

For example, if a grocer were to receive a small business loan for one store or participate in a Federal Assistance Program in one store, then the entire operations of the store or the entire operations of all the stores within the corporation would be covered.

This standard is significantly broader than we feel that we have received under pre-*Grove City* coverage.

On the other hand, in looking at section 2 of the bills, those applications that would apply to State and local governments seem to have a more limited scope that would only apply to a department, agency, or an entity within that State government regulatory agency.

We think this narrower concept could be applied to the word "corporations".

A more important issue that we feel needs to be resolved is the wording of subsection (4). It covers any other entity determined in a manner consistent with coverage provided with respect to entities describied in paragraph (1), (2) or (3).

Yet the text provides no meaningful guidance to which unspecified entities should be analogized to those in the first three subjects, or how such analogies are to be reasonably drawn.

Unless specific qualifications can be advanced, the result of this language could lead to inevitably identical indirect aid provisions of the 1984 civil rights legislation.

For example, NGA has attempted to examine these two alternative legislative proposals before Congress from the standpoint of its effect on the grocery community.

In its legal analysis offered to the Staff Director of the U.S. Commission on Civil Rights, our concern is supported by allegations that coverage of grocery stores and supermarkets could be analogized to the *Grove City* decision such that a grocery store would be an entity and thus within paragraph (4)'s threshold meaning.

Further, by virtue of servicing food stamp beneficiaries, the grocery store could be covered under paragraph (4) in a manner consistent with the coverage of a university enrolling a student who receives financial aid. Thus, the grocery store in this situation is just like the university, servicing someone who receives Federal aid usable only as an entity like itself.

Similarly, this question was raised by Assistant Attorney General Brad Reynolds in his testimony on March 7.

The principle of analogy established in subsection (4) is of vital importance since the extension of Federal regulations to programs and activities would follow the *Grove City* definition of Pell grants to students as Federal financial assistance.

Once this is understood, it becomes clear that the Food Stamp Program and other Federal aid efforts operate in a similar manner.

Thus, if the interpretation offered to the Staff Director of the Civil Rights Commission is in fact adopted, the range of potential statutory obligations upon the independent grocery community is of major impact.

All grocers who participate in the Food Stamp Program, regardless of their size, would be subject for the first time to numerous USDA regulations regarding paperwork, notice requirements and other regulatory specifications.

In conclusion, I would like to state that NGA believes the demonstrated need for such analogous statutory requirements is absent and certainly the need is not necessarily there for legislation to impose it.

The record of America's grocery establishments is admirable. Retail grocers have participated in Federal programs such as food stamps, and I might also add Medicaid payments under pharmacies, by providing fair and effective service to recipients.

We would suggest that any meaningful restoration of the civil rights legislation to the position prior to *Grove City* must be based upon an absence of Federal civil rights regulations over the retail grocers participating in these programs.

Mr. Chairman, thank you for the opportunity to present these views, and we appreciate your consideration.

[The prepared statement of Thomas F. Wenning follows:]

PREPARED STATEMENT OF THOMAS F. WENNING

Mr. Chairman, my name is Thomas F. Wenning and I am Executive Vice President and General Counsel for the National Grocers Association. I am pleased to be here today and to have the opportunity to express the views of the members of the National Grocers Association.

The members of the National Grocers Association comprise the small business sector of the food retail and wholesale distribution industry, and include 1,700 independent food retailers, 62 wholesale distributors serving 28,000 stores nationwide, as well as 58 state and local food associations. Our members are part of the largest segment of the U. S. retail sector. According to the U.S. Department of Commerce, total sales for food retailers reached $281 billion in 1984 and are expected to exceed $300 billion this year. Nearly 95% of food sales occur in our nation's 128,000 grocery stores.

Perhaps even more important than such statistics is the fact that in hundreds of America's cities and towns the small, independent grocer serves as a vital focus of community life. As such, he has come to both influence and reflect the attitudes and beliefs of many of his fellow citizens. There can be no doubt that the fundamental issues posed by discrimination and the appropriate nature of governmental responses are of meaningful, daily concern to our membership.

While numerous aspects of these questions have received prominent attention for a number of past decades, a recent Supreme Court decision, and the subsequent response to it, have once again called upon the nation's lawmakers to carefully deal with the problem.

BACKGROUND

On February 28, 1984 The Supreme Court of the United States announced its decision in the case of Grove City College, et al. v. Terrel H. Bell.[1] In that case the Court had been called upon to interpret the reach of Title IX of the Education Amendments of 1972,[2] which prohibits sex discrimination in any "education program or activity" that receives federal financial assistance. It is sufficient for our present purposes to focus upon the Court's principal holdings therein. First, a unanimous Court found that federal aid to students through basic educational opportunity grants (BEOG) extended to students at Grove City College was sufficient to trigger Title IX coverage of that school. However, in a second critical finding, a 6 to 3 majority held that the statute's language reached only the particular education program or activity identified directly with the federal funding--in this instance the student financial aid office.

While the final reach of the Supreme Court's decision might initially seem to be quite limited (indeed, in Grove City College itself no discrimination was ever even alleged or demonstrated, the case having arrived at the Court as a matter of statutory interpretation), such was most definitely not the case. This was so because the language employed by Title IX was virtually identical to that utilized by three other crucial federal antidiscrimination statutes, i.e. Section 504 of the Rehabilitation Act of 1973 ("Section 504"),[3] the Age Discrimination Act of 1975 ("ADA"),[4] and Title VI of the Civil Rights Act of 1964,[5] all of which prohibit certain types of discrimination in federally assisted programs. Thus the "program-specific reading" announced in the Grove City case would be equally applicable in the application of each of these legislative enactments as well. Indeed, the Court clearly signaled its intention to apply such a reading to the other statutes in deciding a Section 504 case, Consolidated Rail Corporation v. Darrone[6], on the very same day.

The announced decisions immediately produced a storm of criticism and Congressional attempts at legislative reversal. The criticism and Congressional activity to the Supreme Court's decision occurred in spite of the fact that both the legislative history surrounding the original passage of Title IX some thirteen years earlier and the decisions of every federal court to consider the issue--with the exception of the Third Circuit, the opinion overruled in Grove City--had clearly endorsed the "program specific" approach[7]. Thus, the Supreme Court in overturning the Third Circuit's decision only made official what had already been held to be the operative law through prior legislative intent and judicial decision.

Legislation was introduced to "restore" the broader interpretation or to "return to" what was perceived as the pre-Grove City statutory reading. In both the House (H.R. 5490) and Senate (S.2568) remedial legislation focused upon a broad redefinition of the concept of the "recipient" of federal assistance and the responsibilities accrued therein. House passage was obtained but the Senate could not reach a compromise before adjournment.

In response to reactions that the prior 1984 legislation was more extensive than a mere overturning of the program-specific approach, two quite conflicting statutory approaches are now before the 99th Congress. The first is entitled the "Civil Rights Restoration Act of 1985", H.R. 700 and S. 431. Both, in a tacit acknowledgment of last year's criticisms, no longer seek to insert the word "recipient" into the relevant prohibitions of the four cross-cutting civil rights statutes. Rather these bills seek to define the existing statutory phrase "program or activity" in a far broader and more encompassing manner.[8] Congressman Hawkins described H.R. 700:

> "This bill is a comprehensive response to last year's Supreme Court Grove City College decision. Our bill would restore the broad scope and coverage of our fundamental civil rights statutes. We make it crystal clear that we can not, nor will

> not, accept discrimination in any program by institutions that thrive on federal funds.
>
> "Our bill this year differs in approach from last year's efforts, and has resulted in a more simple, straightforward clarification of the statutes. We set out specific, clear standards for determining coverage. Once again, the principles of institution-wide coverage would apply to education institutions, state and local governments, and corporations, and other entities which receive federal financial assistance."[9]

An alternative approach is offered by Senator Dole in S.272, "The Civil Rights Amendments Act of 1985." As the Senator himself has explained:

> "The approach of the bill is simple. It would amend all four laws to make clear that where federal financial assistance is extended to any educational program or activity of an education institution, the institution itself is to be considered the covered 'program.' The bill also adds a 'grandfather' clause to each law to insure that the Grove City case does not serve as precedent for judicial interpretation of civil rights coverage in other areas, it being the clear intent of this bill that such coverage is to be as broad as it was before the case was decided.
>
> "The clause provides that in circumstances not involving education institutions, the meaning of the phrase 'program or activity' remains the same and should be construed without consideration given to the Grove City decision--and also to theSupreme Court's earlier North Haven decision, portions of which the court relied upon in reaching its holding in Grove City."[10]

GENERAL PRINCIPLES

The National Grocers Association (N.G.A.) is acutely conscious of the complexities which surround this issue and of the importance of obtaining a proper and responsible governmental regulatory approach. Given the potential moral and economic injuries which our society could suffer should Congress make an incorrect decision, N.G.A. urges that each and every Congressperson study any legislative approach with the utmost of care and concern. In formulating its own position, N.G.A. has been guided by certain basic principles of evaluation which it then sought to conscientiously apply to these specific legislative alternatives.

First, N.G.A. expresses its strongest possible opposition to all beliefs and practices rooted in discrimination or bias against any person or group on account of race, color, national origin, religion, sex, age, or handicap. We have been and remain strongly committed to the creation of a society in which intrusive forms of bias and racism are rejected in favor of fairness and integrity.

Second, because of the fundamental importance of the preservation of these aggregate "civil rights," N.G.A. fully recognizes that there is a distinct and proper role for governmental regulation. This is especially true when specific instances of discriminatory or prejudicial activities may be supported through the direct or indirect financial assistance of government programs. In such situations "civil rights" regulations and restrictions of a specific nature are virtually necessary if we are to remain as a nation of generally "free" citizens. Certainly when such legal restraints represent a decent respect for the essentially private nature of our society, they represent an intelligent and reasonable balance between individual freedom of action and governmental preservation of societal values.

Third, at the very same time the Association must also observe that any set of government regulations, especially those designed to control and alter the economic and social complexities of our society, are bound to be costly, complex, and burdensome. Quite often it is a regrettable fact of life that such complexity and cost are a virtual necessity in order to insure general compliance and effective legal prosecution. Even so, history unfortunately teaches us that such regulations, no matter how innocently undertaken and small in initial scope, rapidly expand, pose ever more onerous and disruptive burdens upon largely innocent parties.

Fourth, given these realities it is a crucial function of government to achieve an intelligent and fair balance between the desirable purposes of legal intrusion and the undeniable costs of such regulations. The National Grocers Association strongly believes therefore that governmental rules and regulations of the type set out here are justified only when clear and convincing evidence of a demonstrated need or justification has been obtained. Given the actual or potential costs in terms of principles and finances which accompany any such statutory schemes, strong evidential support is required as a justification for the expansion of any such regulatory network. The adage that "if it ain't broke, don't fix it," while perhaps lacking rhetorical eloquence, still offers us some sound advice. The present Assistant Attorney General in the Civil Rights Division expressed the balance this way,

> "...the role of the Federal Government under our Constitution is a limited one and an excessively powerful federal regulatory force should not be allowed to trample upon legitimate claims to independence and pluralism in the private sector without a strong showing of need."[11]

This is a particularly apt balance to be drawn in the area of "civil rights."

Fifth, and finally, in dealing with issues so deeply felt, and so central to the fabric of our society, it is essential that the decisions of our elected legislators be based upon an impartial weighing of all the relevant policy concerns so as to achieve the restoration of civil rights without undue or unreasonable cost to innocent elements within our society.

STATUTORY ANALYSIS

Utilizing such basic principles we may now proceed to a specific analysis of the alternative statutory proposals with which Congress is currently confronted.

(A) H.R.700, "The Civil Rights Restoration Act of 1985."

(1) Statutory Language. The bill is designed to "restore" the previous application of the original four statutes to their "pre-*Grove City*" position, "not create any new obligations for those who receive federal assistance".[12] A careful reading of the actual text reveals the potential for substantial expansion of the reach of Title VI, Title IX, Section 504, and the Age Discrimination Act.

The four subsections to the definition of the term "program or activity" within the bill seek to set out the type of entities to which federal law would ultimately apply. Unfortunately, the language utilized is often so vague and open-ended as to raise unanswered questions and concerns for numerous, currently unsanctioned institutions. Certainly, Subsections (1) and (2), which deal with state and local governments and with public and private elementary and secondary schools, greatly broaden the expanse of governmental and educational activities to be covered.

Subsection (3) would subject all of the operations of entire corporations, partnerships, or other private organizations to coverage if any of their parts are extended federal aid. For example, if a grocer were to receive a small business loan for one store, or participate in a federal assistance program in one store, then the entire operations of the store and of all stores within the corporation would be covered. This standard is significantly broader than pre-*Grove City* coverage. This is in sharp contrast to the situation prior to Grove City in which private corporations and enterprises were subject to federal regulation only in their federally funded programs and activities.

Most important is the wording of Subsection (4). It covers "any other entity determined in a manner consistent with coverage provided with respect to entities described in paragraph (1), (2), or (3).[13] Yet the text provides no meaningful guidance as to which unspecified entities should be analogized to those in the first three subsections, or how such analogies are to be reasonably drawn. Unless specific qualifications can be advanced, the result of this language would inevitably be identical to the "indirect aid" provisions of the 1984 Civil Rights Act, in which entities such as grocery stores and supermarkets were reached simply because they receive aid "through another entity or person."

N.G.A. is particularly concerned that H.R. 700 would seem to say that no matter what the size of the original federal grant, no matter how lengthy its passage through the "other entity," and no matter how distant its link in the chain of distribution, the full force of federal coverage will apply.

(2) Standards of Interpretation. Despite what would seem to be the potentially substantial expansion of coverage embodied in the plain language of the relevant statutory provisions, reliance continues to be placed upon the stated "findings" and "intent" in the legislation to restrict application to pre-Grove City limitations. Congressional intent and findings should not be relied upon as a trustworthy and reliable device for the accomplishment of such a crucial purpose. First, even the official "Findings of Congress" themselves are confusing and unclear. For example, Section 2 declares:

> "legislative action is necessary to restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered."[14]

Yet a careful examination of the "laws as previously administered" reveals that prior executive branch application was neither "consistent" or necessarily broad. Certainly institution-wide coverage was in no way a consistent agency policy and numerous regulations were so vague as to permit either an institution-wide or program specific interpretation. In circumstances such as this,

> "It is a most imperfect legislative technique for Congress to offer vague and ill-defined legislation that states in its preamble an intention to look for interpretative guidance to an amorphous body of prior regulatory and administrative activity -- whatever it may be and no matter how unfaithful it was to the legislation itself. ...this language is obviously hortatory, and cannot have the effect of codifying the myriad agency interpretations and practices."[15]

The guide far more likely to be judicially employed will then be the bill's plain language, language with the potential for a massive expansion of federal coverage. Indeed, given the confusion and even contradictions embodied in the legislation's wording, it is likely that the courts and the executive branch would turn to the broadest reach of previous regulations in the prospective interpretation of the present statutes.

Indeed, perhaps most telling is the fact that if it were truly intended to exclude ultimate beneficiaries of federal financial assistance from statutory coverage, such specific language of exclusion could have simply been inserted into the bill. Indeed, the failure to do so suggests a contrary purpose. Certainly such an explicit statutory approach would seem far more reasonable than reliance upon the imprecise, open-ended wording of this law, coupled with the vague, often contradictory guidance offered by its "findings" and legislative history.

(3) Reach of Coverage. It must now be clear that such a combination of language and intent can produce a far more expansive system of

anti-discrimination coverage than this nation, and certainly the food distribution industry, has ever previously experienced. If adopted, H.R. 700 could broaden the reach of Title VI, Title IX, Section 504, and the Age Discrimination Act, such that the non-educational and commercial activities of colleges, private and religious school systems, grocery stores that receive food stamps, farms that receive storage payments, disaster loans, price supports, or crop insurance, and manufacturers who have any research contracts with the government, would fall subject to greater federal regulation.

The accompanying increase in vulnerability to federal regulation and oversight of institutions, programs, and even individuals does not represent "restoration" of civil rights as previously enforced. Let there be no mistake here, what is being offered in H.R. 700 is no step backward to the successful experiences of previous limited regulations, but rather it is a step forward into a future of substantially expanded federal civil rights authority and regulation.

(4) Disadvantages. The legislative expansion of the federal rules and regulations set out in Title IX, Title VI, Section 504, and the Age Discrimination Act involve "onerous administrative reporting requirements, disruptive agency compliance reviews, and massive bureaucratic paperwork."[16] Compliance with all of the provisions of the more than 50,000 words of federal regulations dealing with civil rights cannot help but place significant economic burdens upon thousands of newly covered business and governmental entities throughout the nation. Many small businesses lack the resources, legal and staff, to analyze the regulations of every federal agency.

Of equal concern are the probable consequences of the administration and enforcement of such newly applicable statutory rules and regulations.

Obviously the expansion of the regulatory scheme will have federal budgetary consequences. But of greater possible consequence would be the enforcement difficulties created. In addition, the proposed legislation would make fund termination applicable to "the particular assistance which supports such noncompliance."[17] This is a substantive alteration from the current provision which limits such cutoffs to "the particular program, or part thereof, in which noncompliance has been so found."[18] One might pass over the inherent difficulty of accurately interpreting the phrase "supports such noncompliances" to note that fund termination, as set out herein, would seem increasingly unreasonable as a remedy. This is so because the reach of the statute's coverage begins to effect programs increasingly removed and remote from actual federal dollars. As a result, what will be called into play is the Title VI provision that compliance may be affected "by any other means authorized by law."[19] Since an injured person may bring suit against a grantee under a private cause of action,[20] H.R. 700 would give to private parties and their attorneys a major new incentive to file a vast number of burdensome law suits. It must be stressed that all of these undesirable results, whether in terms of coverage, oversight, monitoring, compliance, or enforcement will be totally new for a very, very substantial number of individual, corporate, and governmental entities.

(5) Justification. What is assuredly most remarkable and most troubling about this situation is the virtual total absence of any demonstrated need for such new and expansive statutory coverage, with its accompanying rules and regulations. In past instances Congress has acted judiciously to correct public and private racial, sexual, religious, age, or physical discrimination. (See for example, the Civil Rights Act of 1964, the Fair

Housing Act of 1968, the Rehabilitation Act of 1973, etc., etc.). It has done so upon a clear and convincing, documented record of abuse and discrimination. The public debate on H.R. 700 should seek similar justification.

(B) S. 272, "The Civil Rights Amendments Act of 1985." As previously set out, the reach and purpose of S. 272 would seem more modest in scope. This legislation provides that extension of federal aid to any college or university educational program or activity will suffice to bring all such programs or activities of those institutions within the reach of Title IX. (Thus, women's college athletic programs which were a matter of prime concern would be fully covered). Moreover, the bill amends the other three similarly worded civil rights statutes--Title VI, Section 504, and the ADA--to ensure that, as applied to educational institutions, their coverage will be institution-wide, not program-specific. The application of all four statutes outside the educational environment of schools, colleges, and universities will remain exactly the same as it was prior to the Grove City opinion, uninfluenced by the Supreme Court's interpretation of Title IX in that case. Certainly such legislation represents a genuine "restoration" of all possible concerns raised by the Grove City decision, without attempting to expand or increase the reach or coverage of federal civil rights requirements beyond the scope they had previously achieved prior to the Court's action.

N.G.A. POLICY POSITION

The previous analysis has attempted to examine the two alternative legislative proposals presently before Congress. From the standpoint of prior Congressional debate and the issues raised under current proposals, it seems clear why the grocery community is very definitely concerned over being a potential target population for the full scope of such regulations. Certainly the legal analysis offered to the Staff Director of the United States Commission on Civil Rights supports that concern:

> "...this bill covers grocery stores and supermarkets participating in the Food Stamp Program: paragraph 2(A) of the bill's definition of "program or activity" covers all operations of a university which is extended Federal financial assistance. Under Grove City, Federal financial assistance to a university, of course, includes the enrollment of a student who receives Federal student aid. A grocery store is an "entity," and thus within paragraph (4)'s threshold meaning. Further, by virtue of servicing a Food Stamp beneficiary, the grocery store can be covered under paragraph (4) in a manner consistent with the coverage of a university enrolling a student who receives Federal education aid: the grocery store in this situation is just like the university--servicing someone who receives Federal aid usable only as an entity like itself."[21]

The principle of analogy established in Subsection (4) is of vital importance since the extension of federal regulations to programs and activities would follow the Grove City definition of Pell grants to students as federal financial assistance. Once this is understood, it becomes clear that the food stamp program and other federal aid efforts operate in a similar manner and that, despite the promises of its sponsors, the judiciary would be very likely to hold Subsection (4) fully applicable to grocery stores which receive food stamps. Indeed, the potential final reach of coverage could extend to food distributors and wholesalers providing such stores with their merchandise, as well as to stores with inhouse pharmacies engaged in filling medicare or medicaid prescriptions, and even to those grocery establishments guaranteed commercial loans by the Small Business Administration. N.G.A. firmly believes that such a result does not correspond with past or current law or enforcement policy under the Food Stamp Program. Certainly, the Supreme Court in Grove City suggested no such change in food stamp policy.

Thus, if the interpretation offered to the Staff Director of the Civil Rights Commission is in fact adopted, the range of potential statutory obligations upon the independent grocery community is of major impact. All grocers who participate in the Food Stamp Program, regardless of their size, would be subject, for the first time, to numerous U.S.D.A. regulations regarding paperwork, notice requirements and other regulatory specifications.

It must be stressed that each individual statutory regulation is usually accompanied by its own particular maze of costly and complex reporting requirements, a variety of possible on-sight compliance reviews, potential investigative actions, and affirmative responsibilities which might include substantial architectural modifications within each store in order to comply with federal handicapped accessibility requirements. Of course, this does not even touch upon the possibilities for increases in costly litigation as a result of private or governmentally initiated complaints. There is no doubt that the 50,000 words of federal regulations dealing with civil rights do not describe simple or painless steps, easy for each and every commercial establishment to follow.

Under some interpretations of the analogy provisions of Subsection (4), members of the grocery industry might be brought within reach of extensive disability regulations. In response to that contention, some of the bills key supporters have indicated that such burdens would be less severe, or even nonexistent, for the small grocery community, the so-called "mom and pop" operations, because "federal disability regulations apply only to stores with 15 or more employees..."[22] Unfortunately there are a number of fallacies in this line of argumentation. First, and most obviously, it totally disregards the burdens placed upon all stores with 15 or more employees. The simple fact that a store may have a large number of employees in no way supports the inference that it is financially healthy and easily able to bear extra costly burdens imposed by regulations. Second, a large number of local grocers make positive efforts to hire significant numbers of part-time employees. This provides valuable employment and training for many members, particularly younger ones, of the community and is a distinct asset to the local and national economy. Yet, now such employment efforts would actually be penalized by operating to bring the store owner under the ambit of these new and costly regulations. There is little doubt that faced with such a choice many store owners might elect to change employment policies. Finally, it must be realized that while some federal disability regulations apply only to stores with 15 or more employees, many others are all inclusive, regardless of the size of staffing. For example, federal paperwork and notice requirements, detailed disability employment regulations, standards governing the construction of new facilities, various communication requirements, etc., etc., would be applicable to all recipients of federal aid. In short, coverage above or below the 15 employee limit would impose costly burdens upon the nation's grocers, and might even force counterproductive modification of their own employment policies.

In formulating a balanced judgment about the reasonability of such statutory impositions it is relevant to consider the economic status of the independent grocery industry. While its aggregate figures are impressive enough, each individual business presents a very different picture. Thus, despite rather large dollar figures, 1984 profit margins were a lean 1.3% of sales, which is representative of historical profit levels in food retailing. In other words, for every dollar spent in a grocery store, 99 cents covers expenses while a penny goes to profit. Obviously the added burdens imposed by federal civil rights regulations could greatly lessen even these meager margins or adversely affect the continued viability.

N.G.A. believes the demonstrated need for such statutory requirements is absent and should not be legislatively imposed. The record of America's grocery establishment is admirable. Retail grocers have participated in federal programs, such as food stamps, by providing fair and effective service to recipients. No clear and convincing proof of any discrimination or prejudice upon the part of this nation's grocers has ever been offered up. Indeed, one cannot even locate allegations of the type and kind of bias which requires such a comprehensive legislative remedy. Therefore, any meaningful "restoration" of civil rights to the position prior to Grove City must be based upon an absence of general federal civil rights regulations over this nation's grocers, rather than the active intrusion.

SUMMARY

The members of the National Grocers Association are acutely conscious of the necessity to control and eliminate prejudice, discrimination, and bias in our society. As important members and leaders within their cities and towns, they have consistently worked to eliminate these elements from their own communities. We fully acknowledge the appropriate role of governmental regulations to guarantee proper antidiscrimination practices when private efforts are proven insufficient. However, N.G.A. strongly believes that within our essentially free, individual society, any and all such governmental intrusions must be based upon a demonstrated need for action, a need supported by clear and compelling evidence of abuse. The rhetoric of "civil rights" should not be permitted to be substituted for balanced, well reasoned policy judgments. This is especially so when the reality of current regulatory efforts inherently involves costly and burdensome responsibilities.

Within the environment we now confront the need for some degree of remedial legislation occasioned by the 1984 Supreme Court's Grove City decision. The National Grocers Association believes that a careful, judicious examination of the two proposed legislative alternatives, "The Civil Rights Restoration Act of 1985" (H.R. 700) and "The Civil Rights Amendments Act of 1985" (S. 272), reveals a preference for the clearer, precise scope of the latter. Despite the promise of its title, H.R. 700 goes far beyond a mere restoration of the rights and obligations which existed prior to the Grove City decision. Rather, it clearly contains the potential for a massive expansion of federal authority and regulation in the civil rights area. While it is possible that if enacted the "Restoration Act" might be interpreted and enforced in a highly restrictive fashion. N.G.A. sees no reason whatsoever to take such a risk. In the absence of any clear and compelling case for expansion, "The Civil Rights Amendments Act of 1985" is more than adequate to the task of returning federal civil rights regulations to their pre-Grove City status. Carefully crafted and drawn, S. 272 will accomplish these aims without any risk at all of expanding unneeded and undesirable federal regulatory intrusions.

The National Grocers Association endorses this legislative approach and supports adoption of this bill or its equivalent.

Footnotes

1 *Grove City College v. Bell*, 104 S. Ct. 1211 (1984).

2 No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance ...

20 U.S.C. § 1681.

3 No otherwise qualified handicapped individual in the United States ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ...

29 U.S.C. § 794.

4 (With certain exceptions) no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

42 U.S.C. § 6102.

5 Section 601 of the Civil Rights Act of 1964, the substantive prohibition of Title VI, currently provides that:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination *under any program or activity* receiving Federal financial assistance.

6 *Consolidated Rail Corp. v. Darrone*, 104 S. Ct. 1238 (1984).

7 *E.g.*, *Hillsdale College v. Department of Health, Education and Welfare*, 696 F.2d 418 (6th Cir. 1982), *vacated and remanded*, 104 S. Ct. 1673 (1984) i light of *Grove City College v. Bell*, 104 S. Ct. 1211 (1984); *Rice v. President & Fellows of Harvard College*, 663 F.2d 336 (1st Cir. 1981), *cert. denied*, 456 U.S. 928 (1982); *University of Richmond v. Bell*, 543 F. Supp. 1376 (E.D. Mich. 1982), *aff'd* 699 F.2d 309 (6th Cir. 1983); *Bachman v. American Society of Clinical Pathologists*, 577 F. Supp. 1257 (D.N.J. 1983).

8 "Sec. 909. For the purpose of this title, the term 'program or activity' means all of the operations of --

"(1)(A) a department or agency of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a university or a system of higher education; or

"(B) a local education agency (as defined in section 198 (a) (10) of the Elementary and Secondary Education Act of 1985 or other school system;

"(3) a corporation, partnership, or other private organization; or

"(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

"any part of which is extended federal financial assistance."

131 Cong. Rec. S1303 (daily ed. Feb. 7, 1985). See also 131 Cong. Rec. S1310 (daily ed. Feb. 7, 1985) (Sen. Simon).

9 Statement of Congressman Augustus F. Hawkins (January 24, 1985).

10 Statement of Senator Robert Dole (January 24, 1985).

11 Statement of William Bradford Reynolds, Assistant Attorney General, before the Committee on Education and Labor and Subcommittee on Civil Rights of the Committee of the Judiciary, March 7, 1985, p. 7.

12 See statements of Senator Edward Kennedy and others, Congressional Record, February 7, 1985 at S 1302-S 1315.

13 See H.R. 700, Section 909, Subsection (4).

14 See text in Congressonal Record, February 7, 1985 at S 1303.

15 See Statement of William Reynolds, op. cit., p. 8.

16 Ibid., p. 6.

17 See text in Congressional Record, February 7, 1985 at S 1303.

18 See, e.g. 20 U.S.C. 1682 (Title IX).

19 42 U.S.C. 2000d-1(2).

20 See Regents of the University of Claifornia v. Bakke, 438 U.S. 265, 419-31 (1978) and Lau v. Nichols, 414 U.S. 563 (1974).

21 Mark Disler, General Counsel, U. S. Commission on Civil Rights, The Civil Rights Restoration Act of 1985, Staff Memorandum to Linda Chavez, February 26, 1985, pp. 5-6.

22 See New York Times editorial, August 28, 1984.

The Chairman. Thank you.

Ms. Polivy, you are next.

Ms. Polivy. Thank you, Mr. Chairman. I don't have a written statement, but I would like to make a few observations.

This is an area of litigation that we have worked in for the past 15 years and I was privileged to be a staff member to a Member of Congress at the time that title IX was adopted in 1972.

The question of the scope of coverage has been a difficulty for many, many years. It culminated with *Grove City,* as you know.

The first observation I would make is that ultimately the question of the scope of coverage is a public policy issue. It is not a legal issue.

It gets to be a legal issue after the legislation is drafted. And I would hope that it would be looked upon by the committee in drafting the legislation as just that.

One of the things that has gotten us into difficulty and perhaps led to *Grove City* is the attempt to be indirect and to be obscure to avoid legislative problems in the enactment of the statute, only to face difficulties when it came to court interpretation.

Second, contrary to some of the witnesses that have spoken this morning, I do not think it is possible to simply limit coverage of the Civil Rights Act to the education area.

Title IX, when it was adopted, was patterned on title VI. All of the Civil Rights Act has been held by the courts to be interrelated and to depend upon one another for interpretation.

I think to now say that we will only deal with the education area is to depart from the consistent policy that Congress has had for well over two decades.

The third observation that I would make is one that Mr. Sensenbrenner made earlier, that to the extent that the legislation does not speak clearly, the interpretations will be confusing.

I think the Congress has been clear, the committee has been clear that it does not intend to extend coverage, and to the extent that there has been criticism of H.R. 700 because it extends coverage, I think that the committee can make clear and the Congress in enacting can make clear that whoever was covered by the bill before is covered in the future.

The question that we are focusing on today, and I would like to keep the focus on, is what portion of the entity covered should be looked at. And it makes no sense from a public policy standpoint to say that corporation A can discriminate in one room but may not discriminate in another room.

If a corporation or any private entity seeks to take Federal funds, they do so with the certain knowledge beforehand that civil rights laws apply to them. And I think so long as this is made clear that no private individual and no public entity is under a disadvantage.

I have listened to the other witnesses today and I must admit I continue to be confused as to how they can argue that a single corporate entity should be permitted to have a dual persona with respect to any discriminatory activity.

Single corporate entities are quite different from governmental entities. A corporation is not the same as a State.

You may be able to analogize it to a housing authority, but that again has a single purpose.

The attempt to suggest that there is confusion created or new rights or remedies created by this law, I think, is misplaced.

The other area that I would like to touch on briefly, and perhaps there will be specific questions, is the question of pinpointing.

It has always been the basic theory of the statute that the funds that were subject to termination were those funds that were involved in the discriminatory activity.

As I read H.R. 700, it is an attempt to ratify again that that is the case.

There is a difficulty in one respect that perhaps has not been addressed, and that is the question of remedy for private actions.

Obviously, the law has always referred to other remedies. The remedy for private action is not pinpointing or termination of funds. The remedy for private actions lies in other areas, such as injunctive relief.

There is a question, which I don't think has been addressed here—the Supreme Court has addressed it in other instances—with respect to whether or not damages are available for private actions.

This bill is silent on that. And I would suggest to the committee that some consideration be given to a question of whether damages should be available for private actions, and if so, the bill should clearly state, because the Supreme Court has held that in spending power bills such as this no damages will be implied unless there is a clear congressional intent to permit it.

But I do not in any way read this bill as changing the fund termination provision that the Government can engage in to an act of discrimination. It goes only to the money that supports the discrimination.

I would leave to your questions anything else and ask leave of the committee to submit a statement at a future time.

The CHAIRMAN. Thank you.

The final witness is Mr. William Taylor of the National Center for Law and Policy.

Mr. Taylor.

STATEMENT OF WILLIAM TAYLOR

Mr. TAYLOR. Thank you, Mr. Chairman.

I am here this morning in my capacity as director of the Center for National Policy Review at Catholic University Law School and also as an official of the Leadership Conference on Civil Rights, the coalition that has made this bill its No. 1 legislative priority for this year.

I should say that, as the committee knows, I am here on rather short notice so I do not have a written testimony at this time. But I ask permission to submit testimony, a statement, for the record.

The CHAIRMAN. Without objection, so ordered.

[The prepared statement of William Taylor follows:]

PREPARED STATEMENT OF WILLIAM L. TAYLOR

Mr. Chairman and members of the Committees:

My name is William L. Taylor and I serve as director of the Center for National Policy Review, a civil rights research and advocacy group affiliated with Catholic University Law School. I appear here today on behalf of the Center and the Leadership Conference on Civil Rights, the coalition of 165 civil rights, labor, religious and civic organizations that has made enactment of the Civil Rights Restoration Act of 1985 (H.R. 700) its primary legislative objective this year.

In my testimony, I will draw on experience I have had over almost a quarter of a century with laws and policies designed to prevent discrimination in the use of federal funds. As General Counsel and Staff Director of the U. S. Commission on Civil Rights in the 1960s, I helped to document discriminatory practices by institutions that received federal funds and later worked with federal agencies charged with implementation of Title VI of the Civil Rights Act of 1964 in the development of their policies and regulations.

I appreciate both the opportunity to testify and the leadership that has been provided over the years by the chairmen and members of both committees in the protection of constitutional and civil rights.

My testimony today is for a limited purpose--responding to criticisms of H.R. 700 that have arisen since its introduction in the House on January 24, 1985. While I am prepared to state the positive case of H.R. 700, I know that in the course of your hearing here and around the country you have heard ample testimony about why the legislation is so vitally needed to assure the protections of law to people who still suffer discrimination. So, for purposes of this testimony, I will assume the positive case and go directly to the criticisms.

1. The distinction between coverage and termination.

Much of the criticism of H.R. 700 stems from the failure of the critics to make a crucial distinction between the broad institution-wide coverage provided for in Section 601 of the Civil Rights Act of 1964 and its counterpart statutes and the narrower reach of the termination of funds sanction provided for in Section 602 of the Act and other statutes.

Until (and in some cases after) the Supreme Court first addressed the question of program specificity in *North Haven Board of Education* v. *Bell*, 456 U.S. 512, in 1982, and then decided it in the *Grove City* case in 1984, the distinction was clear both in the administrative practice of federal departments and agencies charged with implementing the laws and in the decisions of those federal courts that considered the issue. See, e.g., *Iron Arrow Society* v. *Heckler*, 702 F.2d 549, 561 (5th Cir. 1983); *Haffer* v. *Temple University*, 688 F.2d 14 (3rd Cir. 1982); *Wright* v. *Columbia University*, 520 F.Supp. 789 (E.D. Pa. 1981); *Yakin* v. *University of Illinois*, 508 F.Supp. 848, 850 (N.D. Ill. 1981); *Flanagan* v. *President of Georgetown College*, 417 F.Supp. 377, 383 (D. D.C. 1976). In other cases, broad institution-wide coverage was simply assumed. For example, when the Supreme Court held in 1974, that the Department of Health, Education and Welfare had authority under Title VI to require school districts to address the language needs of foreign speaking students, the Court did not suggest in any way that these language needs must be addressed only in those "programs" of a school system that received federal assistance. See, Lau v. Nichols, 414 U.S. 563.

It was only after the Court suggested in dicta in North Haven an identity of construction between the coverage and termination sections of Title IX that some federal courts began narrowly construing the coverage provisions of the statutes. See, e.g., Hillsdale College v. HEW, 696 F.2d 418 (6th Cir. 1982). It is of course the confusion created by North Haven which led to the restrictive Grove City result that H.R. 700 is designed to dispel.

That this confusion still exists in the minds of some critics of H.R. 700 is evident by their reliance on Board of Public Instruction of Taylor County v. Finch, 414 F.2d 1068 (5th Cir. 1969) as a case supporting the concept of narrow coverage. Taylor County most definitely stands for the proposition that fund termination must be narrow and pinpointed to the funds which support discrimination. Equally as definitely, Taylor County stands for the proposition that coverage under the laws is broad. In explaining the reasons for this distinction, the Court noted that the limitation on fund termination in Section

602 "was not for the protection of the political entity whose funds might be cut off, but for the protection of the innocent beneficiaries of programs not tainted by discriminatory practices." 414 F.2d 1075.

These reasons for limiting fund termination in no way support a limitation in coverage. Institution-wide coverage permits other remedies such as negotiated settlements or injunctions (in suits brought by victims of discrimination or the Department of Justice) that would terminate the discriminatory practice, not the flow of federal funds. In the case of such remedies, there is no possible harm to "innocent beneficiaries." Accordingly, the distinction made between broad coverage and narrow termination is supported not simply by legislative history and prior administrative and judicial practice, but by sound reasoning and sensible policy as well. As the Third Circuit concluded in NAACP v. Wilmington Medical Center:

> ...[T]o the extent that these procedures [§602] stand as a limitation, they limit only the power of agencies [to defund], and they in no way undermine the breadth of the underlying principle of non-discrimination. (Citing Senators Case and Kuchel, 110 Cong. Rec. at 5254, 6562). To read [§602] as a limitation on the very rights that are protected by the previous section would violate this principle [of complementary and harmonious interpretation of statutory provisions], and would also traduce elementary canons of logic (citation omitted). 559 F.2d 1247, 1254 and n. 27 (1979).

The question remains whether H.R. 700 is drafted precisely enough to retain pinpointed fund termination while restoring institution-wide coverage. Some critics have claimed that the substitution in H.R. 700 of the words "assistance which supports" for the language about "program or part thereof" in the termination sections of the original statutes would somehow broaden the reach of the termination sanction. To the contrary, the effect of this change is to avoid confusion about the meaning of the term "program" which could lead to a more _expansive_ definition of fund termination. The language in H.R. 700 is almost identical to that used in H.R. 5490 last year, language which received a narrow interpretation in the House report and in statements made by Senate sponsors. It is language taken directly from _Taylor County_ v. _Finch_. (414 F.2d at 1078).

So, in the words of Senator Cranston on S. 431 (the Senate counterpart to H.R. 700) "[t]he statutory scheme would thus retain the basic concept of 'pinpointing', that is, limiting the termination of funds to those funds which have a specific nexus to the discrimination that is found." Cong. Rec., Feb. 7, 1985 at S. 1307.

2. Corporate coverage under H.R. 700.

Other criticisms of H.R. 700 have been leveled at the bill's definitions of the concept of "institution-wide" coverage. Whereas last year, it was said by some that H.R. 5490 was not specific enough, this year some of the same critics are saying that H.R. 700 is too specific, and in ways they do not like.

In this connection, particular attention has been focused on Section 3(a) and other sections which state that "the term 'program or activity' means all of the operations of - (3) a corporation, partnership, or other private organization...any part of which is extended Federal financial assistance."

Critics of this provision say variously that this does not conform to their understanding of prior law, that coverage of corporations does not appear to be limited in the same way that coverage of state and local governments is (to the department or agency receiving funds), that some corporations receive very limited federal assistance (e.g., only grants under the Job Training and Partnership Act) and would be prepared to give up those grants rather than conform to onerous civil rights requirements.

First, as to prior coverage, it is true that the question of corporate coverage has not received the extensive attention in case law that has been given to other types of institutions, e.g., public school systems. The reason for this is that, by and large, problems of discrimination in the corporate area are employment problems rather than discrimination in the extension of services. In employment, both limitations in the provisions of some of the federal funding statutes (e.g., §604 which limits Title VI coverage of employment to federal programs where employment is a "primary objective") and the availability of other remedies such as Title VII of the 1964 Act and Executive Order 11246 dealing with government contractors, has meant that there has not been extensive application of the federal funding statutes.

Nevertheless, cases that have addressed the issue directly or indirectly support the concept of corporate-wide coverage. See Organization of Minority Vendors v. Illinois Gulf Central Railroad, 579 F.Supp. 574 (N.D. Ill. 1983); Marable v. Alabama Mental Health Board, 297 F.Supp. 291, 298 (M.D. Ala. 1969). Conversely, cases that appear to go the other way are predicated on a view that Section 504 of the Rehabilitation Act of 1973 does not cover employment at all, a view repudiated by the Supreme Court in Consolidated Rail Corporation v. Darrone, 104 S.Ct. 1248 (1984).

Further, in one area where there have been significant problems of service discrimination--hospitals and health facilities--it is my understanding that prior administrative practice has not made any distinction between public and private corporate bodies. In both situations, corporations are covered in their entirety. See NAACP v. Wilmington Medical Center, supra.

Second, I believe that the provision for corporate-wide coverage is supported by experience in analogous areas of law as well as by sound policy considerations.

As this Committee knows, Executive Order 11246 is corporate-wide in its coverage. Even if only one plant or facility of a corporation with operations all over the nation receives a federal contrast, all of the operations of the corporation are subject to the requirements of the Order.

Similarly, if a private hospital corporation owns health facilities around the nation it is very difficult to understand why only the facility that receives federal assistance should be required to meet the basic requirement of treating patients in a nondiscriminatory manner.

In fact, I do not know of any well-run corporation that would want to have two sets of policies--one which requires equal opportunity at its facilities that receive federal assistance and another which permits discrimination at its facilities which do not receive such assistance.

If it is proposed that a distinction be made not between physically separate plants or facilities but between the varying functions of a single corporaiton, the arguments against parsing corporate-wide coverage seem to me to be at least equally compelling. Just as a private college that receives student assistance in its finance office should not be free to discriminate in its math department, so a private corporation that receives aid in its geriatrics department should not be free to discriminate in its operating rooms or its pediatrics department.

Third, while analogies in this area are necessarily imprecise, it is not correct to say that private businesses are being subjected to broader or more onerous regulation than state or local governments.

It should be noted that many major business enterprises in this country are conducted through a multiplicity of corporations. H.R. 700 is no way seeks to treat such an enterprise as a unity. Even where a corporation is a wholly-owned subsidiary of another corporation, or has interlocking boards of directors or other indicia of control, H.R. 700 does not reach beyond the formal boundaries of the corporation that is receiving federal assistance.

Nor to my knowledge has anyone made a persuasive argument about why, when a public school system or a large university with multiple sites and facilities should be treated as a unity, a corporation with multiple sites and facilities should not.

Fourth, the claim that some corporations would forego federal assistance rather than subject themselves to additional civil rights requirements is not a new one. Even since Title VI was first proposed in the early 1960s it has been said that insistence on attaching civil rights requirements to federal grants would resultin harm to the very people whom the law was intended to benefit--the poor and disadvantaged. Experience has proved this contention wrong. The progress we have seen in education, health, housing and many other areas over the past twenty years has come because in the end recipients of federal funds have accepted both the funds and the obligation to treat people fairly. It is hard for me to believe that in 1985, corporations concerned abut the need for fuller devlopment of human resources or ways to improve productivity would refuse to participate in programs designed to achieve such goals because they are required to treat people fairly and without discrimination. It is also incorrect to say that the bureaucratic obligations under Title VI, Title IX, Section 504 and the Age Discrimination Act are onerous. The assurances of compliance and periodic reports that are called for under agency regulations are far less burdensome than those of other statutes or executive policies, e.g., the goals and timetable requirements of Executive Order 11246 which call for corporate self-analyses and the preparation of very detailed afirmative action plans.

If, as has been suggested, the problem lies in multiple investigations by different federal agencies of a corporation based on the same underlying complaint, it seems to me that the answer lies not in restricting coverage but in clamping down on bureaucratic malpractice. Civil rights groups do not want to see corporations harrassed or scarce federal resources for civil rights enforcement wasted. We would be glad to cooperate with members of this Committee and representatives of the business community in seeking an end to any duplication in enforcement that can be identified.

Finally, one largely unarticulated area of concern on the part of corporations is the obligation they would have under Section 504 not to discriminate throughout their operations on the basis of handicap. Here, the concern is not about duplication since there are few other laws barring discrimination against disabled people, and corporations are not forbidden under federal statutes from discriminating against disabled people unless the corporations are federal contractors or receive federal assistance. Rather, the problem is that some businesses are concerned about the costs that would be entailed in coming into compliance with the law, costs they have not assumed so far if they believe themselves to be exempt in part of their operations. This Committee has heard and will hear testimony from people far more expert than I on legal issues affecting disabled people. I would say only that in requiring only that "reasonable accommodation" be made in providing employment and accessible services, Congress and the Executive Branch have been sensitive to the need to avoid undue costs in the extension of rights. There have been few complaints on the part of institutions such as colleges that acknowledge they are fully covered that the law has been administered in a draconian way. If there are such problems, I would suggest that the way to resolve them is in revisions of substantive regulations regarding reasonable accommodation, rather than arbitrary exemptions from coverage. Ultimately, the nation will benefit by policies which permit disabled people, as well as minorities, women and older Americans to develop their talents and contribute to their full potential.

3. Other objections to H.R. 700.

Several witnesses in these hearings have addressed or will address their testimony to other objections that have been raised to H.R. 700. So I will not deal with these issues unless requested by the Committee to do so. I would observe, however, that if the Committee reviews these criticisms it will find that many of them are directed not to the amendments designed to restore the four statutes to pre-*Grove City* status but to the very basis of the laws themselves.

In the arguments against department or agency-wide coverage of assistance to state and local governments can be heard echoes of the "states' rights" claims that were made against passage of Title VI in 1964.[1] In arguments that exemptions not currently contained in any of the four laws should be carved out for "fiercely independent colleges" or other private institutions can be heard echoes of the "private property" rights claims that were made against the 1964 Act. The short answer should be that institutions that so value their independence should abstain from any reliance on federal funds. In a real sense, some opponents are seeking to convert the debate about the Civil Rights Restoration Act into a referendum about the desirability of the laws themselves. While civil rights groups have not sought such a referendum, we are confident that Congress if called upon will ratify the wisdom of the decisions it has made since 1964 in passing the laws.

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[1] One example is the testimony of Assistant Attorney General Reynolds that such coverage:

> [O]pens the way for the first time for a nonfunded activity of a state agency in Northern California, for example, to be subject to federal compliance reviews of some other, unknown and wholly unrelated, funded activity of that same state agency that is going on in Southern California. Reynolds testimony at 9-10.

This statement is factually incorrect and exhibits a peculiar understanding of the role of states in our federal system. Indeed it appears to go beyond an assertion of states' rights to plead for "bureau" or "office rights." Or perhaps Mr. Reynolds is merely reviving the old proposal that California be split into two states.

Conclusion

Mr. Chairman, there can be no doubt that the "simple justice" that President Kennedy asked in 1963 in calling for passage of Title VI has become quite complex. The Committees are to be commended for grappling with the numerous technical issues presented to them. But, at bottom the issue remains one of simple justice--whether any other set of values overrides the national policy of equality of opportunity for all citizens and whether the federal government should be obstructed in the performance of its obligation to assure that taxpayers' money does not subsidize discrimination.

If viewed in these terms, I am optimistic that Congress will pass H.R. 700 without weakening amendments. We have come too far along the road toward removing the debilitating effects of discrimination from the lives of people to turn back now.

Mr. TAYLOR. I would like to address myself specifically to the questions raised by Mr. Sensenbrenner in his opening statement and also to a number of the criticisms, principally about the corporate coverage of the bill, that have been raised by witnesses this morning.

In doing so, I will be drawing on my experience over the course of some 25 years with proposals and Federal legislation to prevent discrimination in the use of Federal funds, part of that experience having been as General Counsel and Staff Director of what is now fondly referred to as the "Old" U.S. Commission on Civil Rights.

Let me go first to a question that Mr. Sensenbrenner raised about why the need for a change in the pinpoint termination language in the original statutes.

Now, some people who have focused on this have said that the substitution in H.R. 700 of the words "assistance which supports" for the language about program or part thereof in the termination sections of the original statutes somehow would broaden the reach of the termination sanction.

To the contrary, the effect of this change is to avoid confusion about the meaning of the term "program" which could lead to a more expansive definition of fund termination.

The language in H.R. 700 is almost identical to that used in H.R. 5490 last year, language which received a narrower interpretation in the House report and in statements by Senate sponsors.

It is also language taken directly from the case of *Taylor County Board of Education* v. *Finch,* the Fifth Circuit Decision of 1969 that critics of the bill have in fact relied on for a narrower interpretation of termination as well as of program or activity.

Now, I will point out in the testimony I submit for the record that Taylor County is not appropriately interpreted as narrow in its interpretation of coverage, but we do agree with its interpretation of pinpointing which is narrow, and that is precisely reflected in the bill this year.

So, I would say that in the words of Senator Cranston, the statutory scheme in H.R. 700 and its counterpart, S. 431, would retain the basic concept of pinpointing, that is, limiting the termination of funds to those funds which have a specific nexus to the discrimination that is found.

Now let me turn, if I may, to some of the questions that have been raised about the coverage of corporations.

As all the members of the committee well know, the bill as drafted by the sponsors this year defines program or activity.

Whereas last year it was said by some critics of H.R. 5490 that the bill was not specific enough, this year some of the same critics are saying that H.R. 700 is too specific and in ways that they don't like.

Particularly attention has been focused on section 3(a) and other sections which stated that the term "program or activity" means all of the operations of a corporation, partnership, or other private organization, any part of which is extended Federal financial assistance.

The critics have said variously that this does not conform to their understanding of prior law, that coverage of corporations does not appear to be limited in the same way that coverage of State and local governments is, which is to the department or agency that receives funds, that some corporations receive very limited Federal assistance—for example, as has been said here this morning, only grants under the Job Training and Partnership Act—and would be prepared to give up those grants rather than conform to civil rights requirements.

First, let me get to the question of prior coverage. And I would say it is true that corporate coverage—in the private sector—has not received the same extensive attention in case law that has been given to other types of institutions, for example, public school systems.

And the reason for that is that by and large problems of discrimination in the corporate area are employment problems rather than discrimination in the extension of services.

In employment, both limitations in the provisions of some of the Federal funding statutes—for example, the provision 604 in title VI that says you cover employment only when the primary purpose of the grant is to provide employment—that fact and the availability of other remedies in this area, such as title VII of the Civil Rights Act of 1964 and Executive Order 11246 dealing with Government contractors, has meant that there has not been extensive application of the Federal funding statutes.

Nevertheless, the cases that have addressed the issue, directly or indirectly, support the concept of corporatewide coverage, and I will supply a list of those cases in my written testimony.

Conversely, cases that appear to go the other way are predicated on the view that section 504 does not cover employment at all. And as the committee knows, that was a view that was repudiated by the Supreme Court in *Consolidated Rail Corporation* v. *Darrone*, decided the same day as *Grove City*. So, those cases really are not of significance now.

Further, in the one area where there have been significant problems of service discrimination—I should say one area, it is not the only area—hospitals and health corporations, it is my understanding that prior administrative practice has not made any distinction between public and private corporate bodies. In both situations corporations are covered in their entirety.

And I also believe that the provision for corporatewide coverage is supported by experience in analogous areas of the law, as well as sound policy considerations.

As you know, Executive Order 11246 is corporatewide in its coverage. Even if only one plant or facility of a corporation with operations all over the country receives Federal assistance, all of its operations, all of its operations are subject to the requirements of Executive Order 11246.

Similarly, if a private hospital corporation owns health facilities around the country, it is very difficult to understand why only the facility that receives Federal assistance should be required to meet the basic requirements of treating patients in a nondiscriminatory way.

In fact, I would say I don't know of any well-run corporation that would want to have two sets of policies, one which required equal opportunity at its facilities that receive Federal financial assistance and another which permits discrimination at its facilities which do not receive such assistance.

If it is proposed that a distinction be made, not between physically separate plants or facilities but between the varying functions of a single corporation, the arguments against parsing corporatewide coverage seem to me to be even more compelling.

Just as a private college that receives Federal financial aid in its finance office should not be free to discriminate, so a private health corporation that receives aid in its geriatric department ought not to be free to discriminate in its operating rooms or its pediatrics department.

Now let me get to the second question raised by Mr. Sensenbrenner and by some of the witnesses, the suggestion that somehow private businesses are being subjected to a broader or more onerous regulation than State and local governments.

I think analogies are necessarily imprecise, but it should be noted that many major business enterprises in this country are conducted through a multiplicity of corporations.

H.R. 700 in no way seeks to treat such an enterprise as a unity. Even where a corporation is a wholly owned subsidiary of another corporation, even where there are interlocking boards, even when there are other indicia of complete or almost complete control of one corporation by another corporation, H.R. 700 does not reach beyond the boundaries of the specific corporation that is receiving Federal financial assistance.

Nor, to my knowledge, has anybody made a persuasive argument about why, when a public school system or a large university with multiple sites is covered with respect to all of those sites and facilities and they are treated as a unity, a corporation with multiple sites and facilities should not be so treated.

Now let me get to the other question or criticism, and that is the claim that some corporations would forgo Federal assistance rather than subject themselves to additional civil rights requirements.

That is not a new claim. Some of you will remember that when title VI was first proposed in the early 1960's it was said that insistence in attaching civil rights requirements to Federal grants would harm the very people whom the law was intended to benefit, poor people, minorities, disadvantaged people.

Experience has proved this contention to be wrong. The progress that we have seen over the course of the last 20 years in education, in health, in housing, and in many other areas, has come because the recipients of Federal assistance have accepted both the funds and the obligation to treat people fairly.

It is hard for me to believe that in 1985 corporations that are concerned, for example, about the need for development of human resources, the need for greater productivity in this country, would refuse to participate in programs designed to achieve those goals because they are required to treat people fairly and without discrimination.

It is also incorrect to say that the bureaucratic obligations under title VI and section 504, title IX in the Age Discrimination Act, are onerous.

The assurances of compliance and the periodic reports that are called for under agency regulations are far less burdensome than those under other statutes or Executive orders.

For example, under 11246 you have to do self-analyses, you have to do detailed affirmative action plans, and you have none of those requirements under these Federal funding statutes.

If, as was suggested to me in a meeting with some corporate people, the problems lies in multiple investigations by different Federal agencies of a corporation that are based on the same underlying complaint, it seems to me the answer lies not in restricting coverage but in clamping down on bureaucratic malpractice.

Civil rights groups don't want to see corporations harrassed or scarce Federal resources for civil rights enforcement misused, and we would be glad to cooperate with members of this committee and members of the corporate community in seeking to end any duplication in enforcement that is identified.

Finally, let me address a couple of other points that have been raised.

One thing that ought to be clear, but apparently isn't, is that this bill does not change the recipient definition in any way.

So, to the extent that farmers were covered beforehand, that retail grocery stores were covered beforehand—and I would be glad to answer questions on this—they continue to be covered.

But the coverage in no way, this bill in no way, brings in anybody under the law who was not previously under the law.

It has also been said that the catchall provision creates some question. Now, let's just focus on that for a moment, the "any other entity" provision.

The first three sections list specific entities that are covered and how they are covered, but no one could do a complete listing of all the entities that are covered. And all that the "any other entity" provision says is that you shall apply analogous principles when you are dealing with a water district, for example, or a State housing authority, rather than a department or agency of State government.

I don't know any other way that you could do that, but it really relates only to those entities that are not specifically covered in the first three provisions.

Finally, as to the Dole bill as an alternative, Mr. Jeffords asked whether there were alternatives on any of these provisions, which I thought was a very pertinent question.

There may be a number of things you can say about the Dole bill, but one thing that you can't say is that it is clear and straightforward.

What it says is that—putting aside its coverage of educational institutions, what it says is that you shall treat *Grove City* and *Northhaven* as if they had never been decided and relitigate the whole question, they shall not serve as precedent.

Now, what would happen if you just wiped those cases off the books and relitigated them with respect to hospitals or some other noneducational institution?

There is every reason to believe that the Supreme Court would reach precisely the same decision on precisely the same facts.

And I think part from anything else, it is incumbent on those who say they embrace the Dole bill to say very specifically what they think that provision means and whether they are ready to build legislative history that says institutionwide coverage for corporations, for hospitals or other entities. And if they are willing to go that far, why not put it in the statute and make it very clear as Congress said it wanted to do last year?

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Taylor.

In connection with your final observation, may I ask you this question: Does merely prohibiting reliance on the *Grove City* decision, as it is stated by Senator Dole, in S. 272, prevent the court from reaching precisely the same decision reached in *Grove City* but without reference to that decision?

Mr. TAYLOR. I think, Mr. Chairman, that is exactly what is likely to happen if the Dole bill were passed in the form that it is right now, either that or the court would be so confused by the legislative history that is bound to be made on each side of this issue that it would have great difficulty determining what the bill meant.

And I should note that there is a real difference between the views of some of the prime sponsors in the Senate. Some say they think that that does mean you do cover other institutions, other than educational institutions. But Senator Hatch, for example, has made it very clear that he thinks you do not have such coverage.

So, at best you get a huge amount of confusion and I think the likely result is a reaffirmation of *Grove City* without reference to *Grove City*.

The CHAIRMAN. Well, let me ask the same question of several of the other witnesses. Mr. McEwen, what would be your answer to that question?

Mr. MCEWEN. Prior to answer that, let me respond just a minute to something that——

The CHAIRMAN. Well, would you answer the question that I proposed? We will give you ample opportunity to respond to others, but I would rather have a specific answer to the question inasmuch as you, in effect, referred to the Senate bill, S. 272, in your prepared statement.

Mr. MCEWEN. Specifically, what were you asking?

The CHAIRMAN. I will repeat the same question, then.

Mr. MCEWEN. OK.

The CHAIRMAN. Does merely prohibiting reliance on the *Grove City* decision, as it is stated by Senator Dole, in S. 272, prevent the court from reaching precisely the same decision reached in *Grove City* but without reference to that decision?

Mr. MCEWEN. No, it doesn't prohibit it, but again, I don't think that we can predict what the court is going to do.

The CHAIRMAN. Well, does it prohibit——

Mr. MCEWEN. No, it does not prohibit.

The CHAIRMAN. All right, that is all. That is sufficient.

Mr. MCEWEN. Can I make a statement, sir?

The CHAIRMAN. Well, if you wish, sure, go ahead.

Mr. MCEWEN. Thank you.

The corporate community, in listening to Mr. Taylor's remarks, seems to have been characterized as being anticivil rights because we are opposing some of the specific portions of this particular bill.

First of all, I want to go on record for our organization and for corporations as a whole as saying that we are accustomed to, used to and work quite well with corporatewide coverage of civil rights-type legislation.

In Executive Order 11246, as he stated, we are accustomed to doing affirmative action plans and all that type of thing.

That is not the issue, and I think that he is characterizing our position as saying that if we say that there will be some reluctance to participate in Federal programs like JTPA because of that, we are anticivil rights. That is not true.

The fact of the matter is that what we are trying to say is that if the intent of this bill is to go back to pre-Grove City, then limit it to that and not try to remedy some of the weaknesses in some of the other areas by doing it in one fell swoop with this particular bill.

That is my problem. We are not against corporatewide coverage. We have it already.

The CHAIRMAN. Well, we are glad to know that you have corporatewide coverage, because I think—well, I guess it was Mr. Wenning more than you who seemed to be presenting an argument against corporatewide coverage. I don't know whether it was against corporatewide coverage or for statewide coverage being currently too limited.

Now, are you in effect saying that you want statewide coverage, or are you trying to narrow the coverage of the corporate entity? Which is it that you are doing? Because you say there is a difference, recognizing that the entities may not be analogous. Are you, in a sense, pleading for broader coverage or more limited coverage, and for whom?

Mr. WENNING. Well, I think as far as our members are concerned in the retail community, we have not had extensive coverage under Federal assistance programs. And if we were to be brought in under food stamp programs and other programs, we would be extremely cautious about the role of the Government and where it is going to extend into the nexus of other operations within the retail store community.

How far is that nexus, as far as if coverage was given in one particular area or one particular store, how much was that going to give coverage into another area in order for someone to make the allegation that there is discrimination in another store, another corporation, and merely base that upon the fact that there is Federal assistance in that one single store?

The CHAIRMAN. You do not rely upon the statements of the sponsors or even the language in the bill that the recipient definition has not been changed in any way, and that who was covered before the *Grove City* decision would continue to be covered, who was not covered would not be covered; that the recipient definition has not been changed.

And so, you perhaps are saying that you are seeking a change in the law and not a change that was involved in *Grove City* decision per se.

Mr. WENNING. I think we have a concern whether the change in the definition of program or activity is so broad that it also affects the definition of recipient. I think that is where we have a concern in that area.

The CHAIRMAN. Well, you are not relying on the language, or on the legislative intent, or on the legislative history, or on what H.R. 700 does, for it is clear from those items that the statutory definition of who is, or who is not, a recipient is not changed. You are going outside of that context in some way, and I don't quite understand where it is that you are going, or where you can be specific in how that definition has been changed.

Mr. WENNING. I am not saying that the definition has been changed. I am saying that in coverage of all the operations of the corporation, that we are concerned that that provision in defining program or activity extends it into areas where that program or activity is not in any way involved in the rest of the corporation.

The CHAIRMAN. Did you want to comment, Ms. Polivy?

Ms. POLIVY. Yes, Mr. Chairman. I think part of the difficulty with Mr. Wenning's position is that what he is seeking is an answer to a question that has not been subject to litigation. He is seeking a specific answer to a general proposition.

The general proposition in the legislation is that a recipient yesterday is a recipient today, will be a recipient tomorrow.

The question of whether or not his grocery store that is receiving food stamps or utilizing food stamps is discriminating and thereby is covered in its entire operation is, in effect, a specific case that nobody has brought in litigation.

Certainly, there would be no reason to look at H.R. 700 as trying to answer those questions. I think the most the Congress can do is to say that there is no change in recipient, those people who were recipients of Federal funds before continue to be the people covered by the act. And any further than that will open up a morass of specific questions that are not subject to legislative answer, they are subject to administrative or judicial answer.

So, I think that to the extent that this argument stems from a single example, legislation cannot answer it. It can merely say that there is no change of position.

The CHAIRMAN. We have tried to answer that by a general statement, but it doesn't seem to stop the horrendous and alarming type of individual instances being raised which are outside of the scope of H.R. 700. I think you have answered it quite clearly. Mr. Taylor answered that in his statement, as well.

But we cannot prohibit these examples from being raised.

May I ask you, Mr. Wenning, Mr. McEwen, if I understood him correctly, indicated that he favored corporatewide coverage; do you favor corporatewide coverage?

Mr. WENNING. Based upon what I have read to date and where I see us coming down, I would say that in our case we would believe that it should be restricted to the program or activity within that corporation.

The CHAIRMAN. Well, can you explain why an employer who receives Federal financial assistance in one of its departments should be permitted to engage in discrimination in other departments or facilities?

Mr. **Wenning**. I am sorry. Can you restate that?

The **Chairman**. Can you explain why an employer who receives Federal financial assistance in one of its departments or facilities should be permitted to engage in discrimination in other departments or facilities?

Mr. **Wenning**. Well, I don't think that we would make that broad categorization, that that would not be beyond something that the Federal Government could be concerned with.

What our concern is, on the other hand, is in that case where there is not discrimination, of the availability because he does receive Federal assistance in there to go in and take a review or have assurance compliance review and other regulatory aspects that would apply to those situations where there has not been Federal assistance given.

The **Chairman**. Well, inasmuch as you had indicated that you did not favor corporatewide coverage, would it not be possible then for that situation to happen; that in one department or one facility of an entity which receives Federal financial assistance and does not discriminate, but then uses another facility for the purpose of discriminating? Would that not be possible?

Mr. **Wenning**. I would say that it might be possible but I say that that is probably characterizing those of us in the business community——

The **Chairman**. I am not accusing the business community.

Mr. **Wenning**. I understand.

The **Chairman**. I am stating this as a general proposition.

Mr. **Wenning**. I am saying that in theory that could be a scenario that could be raised. But I think in——

The **Chairman**. Would it be possible?

Mr. **Wenning**. Many things are possible, Mr. Chairman, but I think it is not reflective of what actually takes place in the business community in today's environment.

The **Chairman**. Well, I don't think it is necessarily characteristic of the business community, either. But there may be some business enterprises that might do it and which are not part of the association that you represent. We are not, obviously, attempting to tarnish any particular group.

Mr. **Wenning**. I understand.

Mr. **McEwen**. Mr. Chairman?

The **Chairman**. Mr. McEwen.

Mr. **McEwen**. One of the things that concerns smaller members of the business community and so on and may lead to some of the discussion we have here is that there is a belief that there are remedies out there already for discrimination. The EEOC does exist to fight discrimination and there is legal recourse for people who think that they have been discriminated based on race, creed, color, sex, national origin, and that type of thing.

But more importantly, one of the issues, I guess, that has not really been raised and which concerns us is that there seems to be a mixing after a period of time between legislative intent and implementing regulations.

Right now we are right in the midst, in NAM, of the whole thing of the attack on the Executive order, for instance. Many people want to get rid of the Executive Order 11246.

It is not the Executive order that is the problem. It is the implementing regulations. And because of the vagueness of some of the terms here, many of us are concerned not because of the intent that is here, but when it is implemented and with the various agencies involved in enforcement of this, whether or not the implementing regulations will make it more onerous than the intent of the legislation as drafted. And that is where we are more concerned than anything else.

I said that I was comfortable with corporatewide coverage. I didn't say personally whether I liked it or not. But we have to operate under that. We know how to operate under that and that is not an anathema as far as most corporations are concerned. And I want to make sure I make that point.

But again, I don't think that it serves the best interest of any of us to be portrayed as either against or for civil rights because of the position that we are taking on a particular aspect of the legislation, and that I think we need to make sure we cover.

Mr. **Taylor**. Mr. Chairman, may I have a brief comment?

The **Chairman**. Yes, Mr. Taylor. And then the Chair will yield. Mr. Taylor.

Mr. **Taylor**. First of all, Mr. Chairman, I am quite certain that nothing I said in any of my remarks characterized the corporate community as anticivil rights. Indeed, what I was was that because I believe that the corporate community-at-large has a strong sense of social responsibility, I thought there was every reason to believe that they would comply with the law and would not forego the Federal programs.

So, I don't want there to be any misunderstanding about that.

As to something else that Mr. McEwen just said, while it is true that in many areas there is coverage under other statutes, there are two things to be said about that.

One is that if you took that view, you would eliminate the responsibility of the Federal Government to not subsidize discrimination if there was another statute. The obligation not to subsidize discrimination is an independent obligation of the Federal Government and I don't think it can be dispensed with merely because there is another statute that says there is a right.

Second, there are some areas where there is not otherwise coverage, and I would identify, frankly and specifically, one area. That is there is no protection under title VII of the Civil Rights Act of 1964 for people who are discriminated against on the basis of their handicap.

The Congress has, in its wisdom, determined that Federal contractors should be covered and also that people who receive Federal funds should be covered, and they should be covered adequately.

If you restrict corporatewide coverage, you will be denying rights to handicapped people.

The **Chairman**. Thank you.

Mr. Sensenbrenner.

Mr. **Sensenbrenner**. Thank you very much, Mr. Chairman.

Mr. Taylor, coming here as a surprise witness, I think very amply proves the point why the rules of the Judiciary Committee require a 48-hour advance filing of testimony, so that the committee members can review the testimony and draft pertinent questions based upon it.

Mr. Taylor hasn't presented us with any written testimony and his testimony was quite technical in nature. And as a result, while I don't particularly agree with all of the conclusions that Mr. Taylor has reached as a matter of law, I haven't been able to pick apart your testimony in order to draft appropriate questions.

So, for that reason, pursuant to the Rules of the House of Representatives, I am serving notice that we will be requesting a minority day of hearings so that these issues can be more fully ventilated and the hearing record be complete before this bill is reported by the Judiciary Committee for action by the House of Representatives.

Having served that notice on the record——

The Chairman. May the Chair respond that the notice will be noted, but I think you will note that throughout the hearings we have had witnesses that did not present written statements at the time they presented their testimony.

Mr. Sensenbrenner. Mr. Chairman, two wrongs don't make a right.

The Chairman. I am a little surprised that because you disagree with Mr. Taylor's remarks that you make this point at this time. It is not a precedent by any means and it is not something which has been objected to up to this point by either side.

Mr. Sensenbrenner. Well, I would just point out that the witness list that was furnished by the majority staff to us this morning did not even include Mr. Taylor's name on it. All of the other witnesses are listed as appearing, and the two witnesses from business groups, Mr. McEwen and Mr. Wenning, did file their testimony in advance. Ms. Polivy did not and obviously Mr. Taylor did not, because he just showed up today and was given the right to speak.

Now, having said that, I would like to ask Mr. Taylor a question. And that is: Why does this bill propose changing the pinpointing language in the statute when all it is supposed to do is restore the law to the state which everybody thought it was prior to the *Grove City* decision?

Mr. Taylor. Mr. Sensenbrenner, let me preface my answer by saying I am kind of reluctant to get into committee matters but I was simply responding to a request by the committee to appear here this morning. I will submit my written testimony within 48 hours, and perhaps I can make it 36. And if in the committee's judgment it would like me to appear to respond to questions based on my written testimony, I would be glad to make myself available to do that.

So, I don't in any way want to be in the position of not being responsive to any question you have based on my oral or written testimony.

Now, as to the specific——

Mr. Sensenbrenner. Just interrupting that point, the last day of hearings is tomorrow. So, even if you are able to put your thoughts together in 36 hours, which I think is a pretty large order, unless there were a minority day of hearings the hearings would be closed and there would be no way to draft questions based upon what you did submit. That is my point.

Mr. **Taylor**. I would only add that I think I have put my thoughts together, or I thought I had put my thoughts together.

Mr. **Sensenbrenner**. You were very well prepared. The reason for the 48-hour advance filing rule is so that the committee can be prepared, too.

Mr. **Taylor**. As to the question you raised, I think a lot of the confusion in the *Grove City* case stemmed very much from the fact that "program or activity" was used in two different senses, in the coverage sections, the 01 sections, and the termination section.

In the coverage section, we always thought, and the court really didn't disagree with that, that it referred to the program or activity of the recipient.

In the 02 section, it really refers to the Federal program or activity, and it was that kind of confusion, I think, that helped lead to *Grove City*, to that decision.

Now, in the statute, in the bill this year, H.R. 700, "program or activity" is being very specifically defined in the 01 section. And it seems to us clear that you don't want to create that confusion in the termination section.

That is the reason for the change to the language about "assistance which supports".

Mr. **Sensenbrenner**. Mr. Taylor, as you know, I supported H.R. 5490 last year and that was presented to the House as something that did no more than restore the law to what everybody thought it was pre-*Grove City*. And it was a little bit embarrassing when Senator Hatch and others picked it apart in the Senate and were able to demonstrate that it did a little bit more than that.

I take great pride in researching out what I tell my colleagues and I told them that last year's bill was merely a restorative bill, and when it was proven not to be merely a restorative bill my face was red.

Now, I don't think you answered my question specifically. The Supreme Court did not say anything about the pinpointing language in *Grove City* and yet this bill amends the statute to do what appears to be a lot broader termination of Federal funding, even though that issue wasn't even raised in the litigation that brings us here today.

Now, why is that, if this is just a restorative bill?

Mr. **Taylor**. The reason is that, it seems to me that it makes sense for the Congress to speak clearly on this issue to prevent confusion from arising in the future. And there is the danger, I say, that if the "program or activity" language is left as it is in the statute, since a change is being made in a counterpart section, that termination will be deemed to have been broadened by leaving that language about program in the termination sanction.

The reason for the change is to retain the concept of pinpointing. Sometimes when you do something to one section of a statute, it is necessary to do something to another section of the statute to make clear that you intend the same result as you had before.

That is all there is to it. There isn't anything more.

I might just add, Mr. Sensenbrenner, I don't think your face should be red at all because I do think, though we are not here talking about last year's bill, that the House did a very commendable job on it and that the questions that were raised were answered. But at the same time, I think this year's bill is designed to dispel any lingering doubts about that subject.

Mr. **Sensenbrenner**. Well, Mr. Taylor, let me just respond by saying that reading the plain English of the bill could very easily lead one to a conclusion significantly opposite to what you have just said, simply because the words "part thereof" are stricken and there is no "part thereof" inserted in the new language in the pinpointing amendment that is contained in this bill.

Now, if Congress wants to express a public policy statement in broadening the statute, we have every right and every power to do it. But to say that this is merely a restorative act, which is contained in the title of the bill, is flat out a misrepresentation here in the pinpointing language.

It is not a restorative act. It is a broadening of the statute. And if it is a broadening of the statute, then we ought to stand up and say so.

Mr. **Taylor**. I would say, Mr. Sensenbrenner, that—I mean, the interesting thing about this colloquy is that we both, I think, seem to want to get to the same result, and that is to keep pinpointing narrow and limited.

Mr. **Sensenbrenner**. Yes.

Mr. **Taylor**. And this bill draws on the language of the most authoritative case on the subject, *Taylor County* v. *Finch,* to do that.

But if there is any misapprehension about it, we ought to dispel it.

Let me tell you frankly why we in the civil rights community are ready to keep termination very narrow, because the fact is that termination has been used in no more than two or three cases over the last 15 years.

So, that isn't the remedy that we rely on, and we understand the desire of Congress to keep that provision narrow.

We are perfectly prepared to see that that provision is retained in narrow form as long as the coverage provisions are restored to where they were before *Grove City*.

Mr. **Sensenbrenner**. Well, all I can say is that if you want to do that, then the language of the bill ought to be precise and specific, and the language of this bill is not precise and specific. And that is one of the reasons why you are losing me, as a supporter of last year's bill, unless these kinds of questions are answered.

I thank the Chair.

The **Chairman**. Mr. Jeffords.

Mr. **Jeffords**. Thank you, Mr. Chairman.

First, as one of the original sponsors of the bill I certainly want to see it go forward. I personally am not troubled by the corporatewide coverage, and I am troubled but I understand the situation with respect to coverage of not only the States and the local governments but the lack of coverage of the Federal Government. I wish we would cover ourselves as well.

I was successful in getting the handicapped areas applicable to the Federal Government. I don't know why we don't do the others, but I can understand if we are just trying to restore why we are not doing that.

My problem, though, in trying to ensure that we get this bill through, deals with the question—and perhaps it is the definition of recipient—but as to going beyond where I think we wanted to go in the sense that as I understand under the previous law, prior to *Grove City,* there were regulations which wrote out certain people, like the mom and pop stores and things like that.

My problem is that I don't see any authority for those kind of regulations in the law, and if that is the case, then we are going to run into trouble in the Senate or on the House floor of asking whether or not it covers the dairy farm, whether or not it covers the mom-and-pop grocery stores, et cetera. And I have a hard time answering that question.

So, therefore, what I am urging people to do, rather than just to raise those issues, is to assist us in saying, if you agree with me that they are real problems, what we should do in an amendment to ensure that we give authority perhaps for the people who write the regulations to limit the coverage, as they did in the prior regulations, so that we don't run into those problems.

There are various ways that we can do that, either general language, specific language, or just limit the remedy. But I would ask for some help and some comments as to whether or not, first of all, my concerns are legitimate, and, second, if they are legitimate, as to what we should do to try and make sure they do not become deathblows to the bill on the floor of the House or the Senate.

Mr. Taylor, do you want to go first?

Mr. **Taylor**. Yes, Mr. Jeffords. I understand what you are saying. I think it would be a very difficult job for Congress to try to list who are recipients and who are not recipients in the statute.

There was a very good reason, I think, that the Congress left that task to the administering agencies.

And I would say that looking at some of the areas that you have raised, I realize that people have raised concerns but I don't think, if you look at the record over a period of 20 years in the case of one statute and shorter periods of time with respect to other statutes, that there is a real problem.

For example, with respect to farmers, I think it is quite clear that where farmers receive crop assistance, price supports, they are ultimate beneficiaries and are not deemed to be recipients under the statute, and I don't know of any issue that has been raised about that issue in the implementation of the law over a period of time.

With respect to——

Mr. **Jeffords**. Well, if I may interrupt you, that is because it has never been raised as an issue.

Mr. **Taylor**. Well, that is what I am saying. This bill in no way changes——

Mr. **Jeffords**. Right; but that does not necessarily mean it is not an issue. That is the problem we get into, is to try and explain why it is not an issue.

It is easy to say well, they are not a beneficiary or they are the ultimate beneficiary and therefore they are not covered. But how do you distinguish that case from those where we believe there is coverage, like the GSL student or whatever?

Mr. **Taylor**. Well, I guess what I am saying is that the shorthand answer is that if they were not deemed a recipient before because they were an ultimate beneficiary, then there is no way that they could be deemed a recipient now under this bill, because this bill does not deal with the question of——

Mr. **Jeffords**. OK. Let's go to the grocery stores. Certainly that was one where I don't think there is a question that there is a recipient, but the regulations as I understood wrote out small stores. So, you don't have the same argument there, that one is an ultimate beneficiary and the other is not.

Mr. **Taylor**. First of all, as Ms. Polivy said, I don't know, there hasn't been any litigation on this issue over the course of all these years. The only application that I know about in the area of grocery stores has been with respect to section 504, where the regulations do say that there shall be accessibility—that where there is food stamp assistance there shall be accessibility for disabled persons.

But as you say, there is a small provider exception and the small provider exception is with respect to those with 15 or fewer employees. And even where the accessibility obligation applies, there is a great deal of flexibility about how compliance can be achieved and the means chosen to achieve compliance.

Mr. **Jeffords**. That is in the regulations, right.

Mr. **Taylor**. That is correct, sir.

Mr. **Wenning**. Mr. Jeffords, if I may respond to your question a little bit, on the subject of the coverage of grocery stores, I would want to point out that this has never been called into question. As you said, this is one of these things that has never been raised, and we have not been alleged to be a recipient under the program.

The other aspect is, under the regulations there is no definition of what is an ultimate beneficiary, under the USDA regulations.

So, we do have a problem with the unknown and I would like to respond and give some thought to your request on how to address this in a statutory sense.

Thank you.

Mr. **Jeffords**. Thank you. Would anyone else like to comment?

Ms. **Polivy**. Yes, Mr. Jeffords. I think that there is a difficulty with the question you raised in that at least H.R. 700 would do nothing to change the ground rules that we have operated under for the past 20 years.

I think there is a danger in now trying to fix something that is not broken, because, as you know, in this area, as soon as you start to push here it pops out over there.

Nothing in H.R. 700 would change the authority of the executive agencies or administrative agencies to promulgate rules. And if Congress has been happy with the rules that have been promulgated and they have worked well, I would urge that you not be too enthusiastic in seeking to fix it.

Mr. **Jeffords**. I understand what you are saying but I also understand that we have got to get the bill passed. And to me, that is a primary concern. If we don't get the bill passed, all of your arguments become rather senseless.

For instance, we could put a simple statement in that says that we hereby adopt the principles that were set forth in the previous regulation or something like that. I mean, if you want to ensure that we only are doing what was done before, why don't we do something simple like that? That wording perhaps is less than precise, but there is no reason why you can't, for instance, incorporate previous regulations. Those kind of things can be done with one simple sentence.

Wouldn't it be better to do that to ensure that we are doing no more or no less than we did last time, or that we thought we had done?

Ms. POLIVY. I don't think that it would solve the entire problem. With respect to the specific question that you have raised of the small providers and specific instances where regulations have worked well, I think there should be no problem of identifying that and putting it in the committee report that it was not the intent to change those regulations.

Mr. JEFFORDS. But if you had no authority in the statute to write the regulations, then unless you officially in the statute incorporate in some way, directly or indirectly, those regulations, you have not corrected the basic statutory lack of authority to write those regulations.

Ms. POLIVY. The authority to write the regulations is the same authority that existed previously to write the regulations. That has not changed.

Mr. JEFFORDS. Right, and I am saying perhaps it should be.

Ms. POLIVY. And all you are saying is you want to ratify what is in place with respect to specific areas, as I understand you.

Mr. JEFFORDS. What I want to make sure is that I can answer the questions on the House floor and they can be answered on the Senate floor that this bill goes no further in those areas which I am discussing than the bill was thought to go and that we thought those regulations which were written to restrict the areas were authorized and valid. That is what I want to be able to say on the House floor. And I can't say that on the House floor unless I can answer the questions which will be raised on the definitions of recipient and ultimate beneficiary and how you could say that a grocery store that has so many employees is covered but one that doesn't have so many employees isn't, and where is the authority for that argument in the statute.

Ms. POLIVY. I think perhaps I am repeating myself, but to the extent that you want to make that point, the point can be made by the committee in its committee report.

Mr. JEFFORDS. But a committee report is not——

Ms. POLIVY. To the extent that the committee is saying that the purpose of this legislation is not to change definitions of who was a recipient before, I think that is quite clearly what we have all been saying, which should solve most of your difficulty.

Mr. JEFFORDS. But you only get into committee reports and committee hearings when there is an ambiguity, and if there apparently is no ambiguity then they aren't going to even look at the committee report.

That is why I think in order to truly answer those questions you have got to get it into the statute itself.

Mr. TAYLOR. If I might just add one comment, I think, Mr. Jeffords, that some of us share some of the frustration about how to make it clear that this bill in no way expands the definition of recipient. And I also acknowledge and understand your point about some of the fine questions that arise about regulatory coverage and regulatory exceptions.

I think the greater danger would be if the Congress were to try to take on all those areas of regulatory coverage and sort them all out in the statute, is what I was saying.

But with that limitation, certainly I think we would all want to work with you and with other Members of Congress in finding ways to be as explicit as possible about coverage and about the fact that nobody is to be deemed a recipient who wasn't a recipient beforehand.

Mr. **JEFFORDS**. Thank you.

Mr. **MCEWEN**. I think the business community shares that point of view, too. Our concerns, again, were from the standpoint that litigation is based on statutory intent or people's interpretation of statutory intent.

So, to the extent that we can be very specific as to what the intent of the bill is, to that extent we also may be limiting some of the future litigation that undoubtedly will be caused once a bill is passed, because I think that is what is going to put the meat on the bones of what we are talking about here.

We in the business community stand ready also to help the committee in defining some of the specific areas that we are talking about.

Otherwise, I think that I agree with you that the name of the bill ought to be changed from "the Civil Rights Restoration Act of 1985" to "the Civil Rights Act of 1985", because we are doing more than we said that we were going to do as far as the intent as we interpret it.

Mr. **JEFFORDS**. Thank you, Mr. Chairman.

The **CHAIRMAN**. Mr. Bartlett. The Chair is calling on the members in the order in which they came to the committee this morning. If I make a mistake, would the individual sitting next who thinks he has a greater priority nudge. But, Mr. Bartlett, you are next.

Mr. **BARTLETT**. Thank you, Mr. Chairman. I don't know that I have greater priority, but I think I was next in order.

I have a number of questions and concerns. First of all, I do think that it is healthy and I wanted to see if the witnesses agree with that, that there is no one here advocating that we pass either the Dole bill or the Civil Rights Restoration Act of 1985, H.R. 700, without feeling free and unrestrained to consider amendments that would improve it during the legislative process. I just want to confirm that.

You know, there was an informal but heavily enforced no amendments rule out on this bill last time, and it led to some problems which resulted finally in the bill not being passed.

And I just wondered if each of the witnesses do advocate that we consider amendments, if we can find amendments that would improve the bill and would not advocate a no amendment rule. Mr. Taylor.

Mr. **TAYLOR**. Yes; Mr. Bartlett, I would want to be clear on this subject. It would be presumptuous of me or, I think, anybody else to say that Congress ought not, after holding these careful hearings, to consider very carefully any amendment which might be appropriate to improve the bill.

I think there was some misunderstanding, at least from my standpoint, about what civil rights groups were saying last year.

Our concern, and let me reiterate it today, is that this bill, which deals with questions of coverage of the laws, not get into the substantive requirements of the law, because I don't have to tell you there are all kinds of questions that get raised about particular kinds of substantive requirements and remedies, whether it is busing for school desegregation or abortion or any other issues, and those we think are inappropriate questions to consider when one is considering this.

Mr. BARTLETT. I understand, Mr. Taylor. Let me follow up on that. The other panelists may answer the first in the context of the second. That is, like Mr. Sensenbrenner, and Mr. Hawkins, and others, I voted for the bill last year, had some reservations about it because I was concerned that some of the skepticism of some of its opponents may have been well founded in that it tended to broaden and complicate coverage more than perhaps we had intended.

It seems to me that by using the language that is in this bill that this is a better way to approach it, and in fact this is a much more precisely drafted and a better piece of legislation.

I wonder if each of the witnesses could comment on whether they believe this is a better piece of legislation than last year's bill?

Ms. POLIVY. Mr. Bartlett, if I may, to the extent that it seems to be clearer in terms of people understanding what is intended for it, if that is the measure of a better bill, yes. I believe that it gets to the same point that last year's bill was intended to get to.

And the important thing is that there be some legislation passed that does that.

I think that in the hearings that you have held, in the testimony that has been given today, it is clear that people understand what the intent of this coverage is. They may disagree that that should be the coverage, but it is the coverage we thought we had prior to *Grove City* and that is as much as I think the legislation should be seeking to achieve.

Mr. BARTLETT. OK. Mr. Wenning.

Mr. WENNING. I share the view that this legislation is an improvement over last year's legislation. I do think that my testimony, though, my written testimony does reflect our concern that there are some vague areas that we feel could be improved upon and it does raise questions that I raised in my testimony about what the unspoken coverage has been to date and how it is going to affect our industry.

Mr. BARTLETT. Mr. McEwen?

Mr. MCEWEN. I believe it is better than the legislation before. I think it is not the ultimate. I think there is still some areas that we can work on to make it more palatable and more acceptable.

And in answer to your first question, the one that you asked first, NAM has taken the position that we are open to listen to any amendments. I mean, the amendments don't bother us.

We would be less reluctant to listen to an amendment that redefined recipient but we are open to listen to anything, because ultimately our bottom line desire is the same as yours, to get a piece of legislation that reverses *Grove City* and that gets us to the point where we can get back to the business of fighting discrimination.

Mr. BARTLETT. OK. Mr. Taylor.

Mr. TAYLOR. Mr. Bartlett, I definitely think this is a clearer and better bill than the Congress had before it last year.

Mr. BARTLETT. OK. One other question, but before I do that I would just make a comment on something that one of the witnesses said. And that is, I think it is important, I think one of the mistakes and one of the things that troubled me all last year and still troubles me is that often we attempted only to articulate what the intent was. Then some of us assumed the court could go back through the legislative record—and I heard the words "legislative history" far more times than I thought productive in the discussion.

I think the Congress ought to write down in the statute what we intend to happen and then the intent will take care of itself, regardless of the hearings and the legislative history and the colloquys.

I think, by my count and it may be imprecise, it seemed to me just from a layman's counting there were more colloquys on the Civil Rights Act last year in that one debate on the floor of the House of Representatives than the entire number of colloquys in the entire session. That may be a bit imprecise but I am certain it was close.

Hopefully, this bill will require, if we can draft the language in precise enough language, it will require no further colloquys or clarification.

Now, as to my question, and, Ms. Polivy, let me begin with you.

What is bothersome is the GM example, and I use GM as the anecdote that everyone uses. And I suppose my question is, as you have contended that you think all of General Motors should be covered by these four statutes if one plant somewhere or one unit somewhere accepts some sort of Federal indirect assistance, such as the Job Training Partnership Act or something like that—I hope I am not oversimplifying your testimony, but I believe that is what you said.

I suppose my question is: What problem are we attempting to resolve? That is, is General Motors or some other corporation not now covered? Is there some corporation in America that is presently allowed to discriminate in its practices? Is there some practice that corporations are not permitted—leaving aside their intent—are now permitted to engage in that they wouldn't be permitted to engage in if this bill were to pass?

Ms. POLIVY. I am not quite certain I understand your question because I think there was always coverage. Mr. Taylor gave the example earlier of the Executive order, that you had single corporate conception in the civil rights laws.

So, to that extent I don't think that this changes it.

The only difference—I don't think that there is a specific ill that you are trying to cure. You are simply saying that the underlying policy of the civil rights laws has always been that Congress does not subsidize discrimination on the part of recipients of Federal financial assistance, and that is all this bill does.

Mr. Bartlett. If this bill were not to pass, would a corporation be permitted to discriminate in some way that this bill would prevent them?

Ms. Polivy. This is the anomaly that *Grove City* has created, which is why this bill is here in the first place. It has always been the assumption of, I think, Congress and certainly of beneficiaries and of the agencies that have written regulations that that corporation was covered.

It wasn't until the Supreme Court enlightened us in *Grove City* on a limited view of program or activity that we came up with the difficulty of having a situation where General Motors could discriminate here while receiving Federal funds there.

And all this bill does, as I understand it, is to put us back to where we thought we were.

Mr. Bartlett. Well, let me follow up to that, and then I see Mr. McEwen is itching to respond, which I am going to give him the chance to.

But my question is this: Prior to *Grove City* or even today, is General Motors required to fill out some sort of certificate or assurance specifically related to these four statutes because they are a recipient of Federal funds? Or is it because of other laws that don't have anything to do with whether they are recipients of Federal funds?

Ms. Polivy. It varies from statute to statute, but there have always been—I would like to address the question of the burdensome paperwork. These statutes have created minimal paperwork over the years. There have been single assurance forms required. They have not required the kinds of things that have been required——

Mr. Bartlett. My question is, Does GM have to file a single assurance certificate because of their receipt of Federal funds today? And the second question is, Would they have to if this bill passed?

Ms. Polivy. I think the answer would be yes to both.

Mr. Bartlett. Mr. McEwen, I wonder if you can see some sort of discrimination that a corporation is permitted to engage in if this bill is not passed?

Mr. McEwen. You know, that is a very hard question to answer, simply because I don't think there is any statute out there or any statute being proposed that is going to prevent the opportunity for an entity to discriminate. And I don't think that this is going to cover that nor do I think those in the past.

But in light of your questioning, our position is that if this bill were not to pass today, companies or corporations are limited and are covered by what they can do in terms of antidiscrimination laws that are on the books.

And our concern is, if there are things—and I think Mr. Taylor mentioned the handicap provisions before—if we are intent on preventing discrimination as it relates to the handicapped, then let's get at those particular statutes and regulations that cover the handicapped, and not try to get at them through this particular bill, which was not designed for that.

This bill was specifically designed to restore us back to where we were prior to *Grove City*.

Now, if you were to ask us our opinion on some of the weaknesses or the strengths of the civil rights guidelines and laws as they are now, we have opinions there, too. There is some strengthening that is needed, there are some approaches to affirmative action that could be addressed more favorably, and they should be looked at. But not through this bill. That is not the intent of this bill.

I think that our only concern is, with the plethora of paperwork and the regulatory stuff that we have to look at right now, our concern is, as someone else said, if it is not broken, don't fix it. And if it is not broken in this bill, don't address it in this bill.

Mr. **Bartlett**. Mr. Taylor, is there some specific type of discrimination that is now permitted, that a corporation is permitted to engage in that they would be prohibited from if this bill were to pass, assuming that one of their plants received indirect financial assistance?

Mr. **Taylor**. Yes, sir. I would preface my remark by saying I agree with Ms. Polivy, that we had all understood prior to *Grove City* that there was corporatewide coverage. But if this bill is not passed and if corporate coverage is deemed to be limited, then there is a real danger that a corporation which denies equal treatment to an applicant for employment who is handicapped at a plant which is not the plant which receives Federal assistance will be exempt from coverage of the law and the discrimination is not otherwise covered by other laws and it will be permitted to go on.

I would add, to take a private hospital corporation, that if the *Grove City* interpretation is applied in the area of hospitals—and you know that there is every indication that it will be and is being applied—that a hospital which receives a grant, a private hospital corporation which receives a grant in its geriatric department might still be free to discriminate on the basis of race or sex and continue to receive those Federal funds in its pediatrics department or in its operating room or in some other aspect of its operations.

So, those are specific examples, I think, of problems which would be—of discrimination which would remain unsolved and where corporations could be subsidized by Federal funds notwithstanding the existence of discrimination if this bill does not pass.

Mr. **Bartlett**. Thank you, Mr. Taylor. There are other members who are waiting for time, so I will ask one question requiring a yes or no answer, Mr. Chairman, if that is all right.

My question is: If this bill were passed in its form today, which includes both the section 3 referring to corporationwide coverage and also the other entity section, in your opinion would corporations opt out of the Job Training Partnership Act and other kinds of programs in which it is in the best interest of people, the beneficiaries, for the corporations to be involved in? In your opinion, would corporations opt out of what is defined as Federal financial assistance, particularly using their facilities to assist people?

Mr. McEwen.

Mr. **McEwen**. In my opinion, we would not opt out. What we would do is we would do it without Federal assistance, as we have tried to do in the past. Many of us did not participate in CETA programs and some of the other programs, not because the programs weren't good, but because of the ensuing paperwork that was there.

And I think that to the extent that we—we are going to do this with or without regulations. That is the irony of the whole thing. Much of what corporations are going to do, those that are going to do it are going to do it in the absence of these regulations.

But the fact is, no, we would not opt out.

Mr. BARTLETT. Mr. Wenning, would grocery stores opt out of food stamps?

Mr. WENNING. I can't answer whether they would or they wouldn't. I can answer that in the aspect of having to deal with even a single more sheet of paper or whatever the extra piece of paper is, I know in the instance of the Department of Commerce proposal on the Census Bureau that we get a strong reaction from some of our members who don't want to be bothered with it. And I think that is an aspect of it that I think would be a kind of a thorn in their side, that I agree with Mr. McEwen. The members would not be engaged in discrimination but they would just look at it as more of a hassle to have to comply with the paperwork.

Mr. BARTLETT. Thank you. Do either of the other two witnesses have an opinion?

Ms. POLIVY. Yes, Mr. Bartlett. This is the same argument that really has been made in one form or another over the last 20 years. I think the simple prediction on it is that there has been no great difficulty in getting people to participate in those programs based upon the fact that there are civil rights laws in the last 20 years, and I don't expect that there would be any more difficulty now.

Mr. TAYLOR. I would just say, based on the experience of 20 years and the numerous statements in the past that people would opt out, I would say there is every likelihood that they will not opt out, that they will accept the funds and accept the obligation not to discriminate.

Mr. BARTLETT. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Petri.

Mr. PETRI. Thank you, Mr. Chairman. I guess I just wanted to repeat a question that my colleague asked, which is kind of a basic one. And that is: If for some reason Congress again fails to act on legislation to reverse the *Grove City* decision or to repair the *Grove City* decision, what evil will ensue? Who has it left without civil rights protection through other statutes that are on the books in any event?

Ms. POLIVY. I think the broadest answer to your question is that the Supreme Court indicated in *Grove City* that it will view other civil rights laws with the same narrow coverage.

So, I think what you will see is a continuing narrowing in all areas that are covered by this bill and perhaps other areas, as well. It will be the prototype, I believe, of the approach to the judicial interpretation of civil rights laws. And that really is the major concern.

Mr. PETRI. And what would the result of that interpretation be, though?

Ms. POLIVY. Well, I think taking *Grove City* as the real example that we have and analogizing it to other examples, there you have a case where a school received Federal financial assistance—indeed, that school couldn't exist but for the receipt of Federal financial assistance. Yet we are told by the Supreme Court that their obligation not to discriminate on the basis of sex is limited to its financial aid office, whereas the entire program of the school is free to continue to reflect discriminatory attitudes if it so did.

By the way, in *Grove City*——

Mr. PETRI. It didn't do it anyway, so——

Ms. POLIVY. Well, we don't know whether it did or not because there was never any evidence taken. But there you have, if you are going to go by percentages, perhaps 5 percent of the school covered and 95 percent of the school not. That was obviously not Congress' intent.

If you project that on to race areas and out of the education areas, I think you would find the same kind of proportion being tracked, and that is the real danger of permitting *Grove City* to remain intact.

Mr. TAYLOR. I would just add briefly that as examples it would leave unprotected by law the woman who applies for entry into a particular specialized program at a college and is denied admission because of her sex and that program is not receiving Federal assistance.

It would deny protections, as I mentioned before, to disabled people who apply for employment at a plant that is not the plant that is specifically receiving Federal assistance.

There are a long list of such examples. I would say also, broadly it would deny effective remedies to some people who have the theoretical protections of law but don't have effective guarantees of enforcement of those laws.

Mr. PETRI. OK.

Ms. POLIVY. Mr. Petri, if I may add also, what it would do is require a preliminary showing on the part of every potential plaintiff as to the nature of the Federal funds that are being received for the particular activity, which would mean, as a litigator, you would have to tell any potential client that they first had to go through an enormously complex and costly litigation process to prove that there was jurisdiction under the law. That preshowing would effectively wipe out any private litigation, certainly.

Mr. PETRI. Let me just have a followup question, and then if you want to answer the first one, the rest of the panel, and that is——

The CHAIRMAN. Mr. Petri, could we be more specific? Everyone seems to be asking every member of the panel. I am trying to get to some of the additional members.

Mr. PETRI. All right.

The CHAIRMAN. If we can try to direct it to a specific member, I think we can shorten the time.

Mr. PETRI. All right. This is to the people from the National Association of Manufacturers. And that is that if this legislation is passed even without attending to your difficulties with it, do you think that those difficulties would be worse than the description we have had of what would happen if Congress did nothing and let the Supreme Court decision ride?

Mr. MCEWEN. Well, I think that the interpretation or the opinions as to what the Supreme Court would do from my colleagues here are speculative. I think that it is quite possible that what they are saying would happen, but it is also quite possible that it would not happen that way.

Let me go on record as saying, the one thing that we are all in unanimity about—there may not be much other than that, but what we are all in unanimity about is that *Grove City* must be reversed, because I think that as it sits right now it does not serve the interest of any of us to have it as it is right now.

We are disagreeing in many of the fine points as to where the i's should be, you know, the i's dotted and t's crossed. But I don't think there is any of us here who don't believe that in the absence of doing anything we are going to be in a position that is much worse than we have been in the past.

Mr. **Petri**. So, your position is that this legislation is better than nothing but it could be made even better, rather than saying if we don't improve it forget about it, is that right?

Mr. **McEwen**. Yes and no. I agree in part. I guess I want to make sure that you understand our position.

This legislation is better than that which was proposed last year. This legislation still leaves us with some very serious reservations. But if we had to choose between *Grove City* and this legislation, we would choose this legislation.

Mr. **Petri**. All right.

The **Chairman**. Thank you. Mr. McKernan.

Mr. **McKernan**. Thank you, Mr. Chairman.

This question is for Mr. Wenning. In your testimony on page 12 and the succeeding pages, you talk about your concern about inclusion of mom and pop grocery stores. I have found it a little confusing as to exactly what it is in the changes that are proposed in 700 that we are all of a sudden going to trigger coverage which did not exist prior to this legislation, if it passes.

Mr. **Wenning**. Well, I think our concern there was as I pointed out in our testimony, was to that analogy provision that the memorandum to the U.S. Commission on Civil Rights made reference to and to which Mr. Reynolds made reference to in his testimony, as to whether that would—in analogizing us to the *Grove City* decision as to being recipients similar to a college student who pays for his educational institution, whether that treatment would then be extended to the Food Stamp Program as the food stamp recipient gives us a food stamp. Therefore, we would be pulled into it and we would be subject to coverage which we are not subject to now.

Mr. **McKernan**. Let me interrupt you for a minute. It is my understanding that food stamp customer already triggers coverage under the discrimination statutes and it is only a regulation that limits you to not being covered below a certain number of employees that gets the small mom and pop stores out. I wonder how this language is going to change that?

Mr. **Wenning**. I would disagree with your assessment there. What we have been, we have never been brought within that ambit under the regulations nor has the USDA ever enforced that mechanism against the food stamp stores in that position.

I would refer you to a letter written to the chairman of the Senate Agriculture Committee last year in which the general counsel of the USDA said that that has not been their interpretation in the last 20 years.

Mr. **McKernan**. Well, tell me if I am wrong in understanding that those grocery stores with more than 15 employees are already covered under the antidiscrimination laws, and if that is the case, what is the basis for that coverage?

Mr. WENNING. The same reason that the department has not interpreted those regulations in that line that we are a recipient within the guidelines of USDA.

Mr. MCKERNAN. I am sorry, I missed that. I thought you just said that you weren't recipients.

Mr. WENNING. That is correct. We have not been construed to be recipients of Federal assistance within the U.S. Department of Agriculture. We have not been asked to fill out compliance forms or orders within that regulation.

Mr. MCKERNAN. Any of your members, regardless of size?

Mr. WENNING. Correct.

Mr. MCKERNAN. Regardless of whether they are a corporation or an entity?

Mr. WENNING. Correct.

Mr. MCKERNAN. So that you think that perhaps "entity" might somehow bring small mom and pop stores into coverage under this law, whereas corporations, the larger stores, would still not be covered?

Mr. WENNING. No. What I was saying is, if that analogy that was given by the Commission and we made reference to by the Assistant Attorney General was made fact, it would bring everyone within that ambit, whether they were 15 or more or 15 or less.

Mr. MCKERNAN. Well, I only have in front of me a portion of the statement by the Staff Director of the Civil Rights Commission, but that seems to deal specifically with "entity." I don't see how that particular word would make a difference to presently existing large corporate grocery stores.

Mr. WENNING. I am saying it doesn't now. I mean, they would both be brought within the coverage, and the fact of whether or not it is 15 or less or 15 or more, that 15 or less would not be subject to all the handicap regulations that the larger member would be, but they would then be covered under the prescription, if that regulation and that interpretation by the USDA is changed.

Mr. MCKERNAN. I would like to ask somebody else on the panel to help me with this. What I don't understand is what the change is that is triggering this. It seems that there ought to be some other reason, other than the word "entity," that is all of a sudden meaning that those who accept food stamp customers are all of a sudden included. I don't see how whether you are an entity or a corporation, that that is what makes the difference. The question is whether or not the student aid analogy is applicable, and I think that that is an issue that probably applies under the current law as well as under the proposed law.

Mr. WENNING. I think where we are saying that that—it is not the word "entity," it is in the manner consistent with paragraphs 1, 2, and 3 that are made reference in there, and that is how he gets to the analogy provision of going to a—if you are treated the same as a university under *Grove City*, then a food stamp recipient would be treated the same, and that is how we would be covered.

Mr. MCKERNAN. But if we did nothing, if we did nothing and somebody wanted to use the *Grove City* case, why wouldn't you already be included because of the analogy between student aid and food stamps?

Mr. WENNING. Well, I think we were going back to the reference that was made and signaled in the intent of the legislation of not to change the prior *Grove City* interpretations in those instances, and that is on the basis of what we would rely, of saying that if that was not to change those interpretations, that we would have a protection of not changing those regulations as they have been applied in the past.

Mr. MCKERNAN. While Mr. Reynolds was sitting in that same seat I asked him whether or not he concurred with the decision of *Grove City* on the basis that student aid triggered Title IX, and he said yes. If that is the case, I think that all of us on this committee, when Mr. Reynolds was testifying, assumed that there would be an exemption for fewer than 15 employees that got mom and pop stores out of the law now. Also, I think many of us thought that the larger supermarkets already were required to comply. Now, maybe that is not true. I intend to find that out before the hearings conclude.

Did anybody else want to testify on this?

Ms. POLIVY. I think the confusion here is between regulations and statutes. The statute covers mom and pop operations if you look at it technically. The regulations have for the past—since their inception—excluded small providers, and nothing has changed.

Mr. MCKERNAN. Have you seen the letter to the chairman of the Senate Agriculture Committee that Mr. Wenning referred to?

Ms. POLIVY. No, I have not.

Mr. MCKERNAN. Could you furnish the committee with another copy of that? I think it is important, and I think there has been an understanding at least with this committee that food stamps did trigger coverage the same way that student aid triggers coverage, and that it was the regulation of 15 or fewer employees that got the mom and pop stores out.

Ms. POLIVY. I think what is causing the confusion is that there have been some charges made by some previous testifiers that this would open up everything.

Our discussion here today, I think, has been focused on the fact that it would not. There is no intention in this bill, as we understand H.R. 700, to simply throw everything that has been done in 20 years up for grabs again, and certainly not the small provider exception in the regulations unless Congress wants to direct the Department of Agriculture.

Mr. TAYLOR. Mr. McKernan, I think your analysis is precisely correct, that where there was coverage, as appears to be the case, the only way, effective way to deal with that, if one wanted to get certain kinds of recipients out, would be to revise the definition of "Federal financial assistance," which the Supreme Court was unanimous on in the *Grove City* case.

So that I agree with you that what you do about the coverage of an entity that is a recipient does not have an effect on the situation that Mr. Wenning is discussing.

I would only add, Mr. Jeffords I think earlier raised a question about the statutory authority for the kind of regulatory distinction between 15 or more or 15 or less, and I would assume, without having investigated the question completely, that that is a prudential exemption that is based on the recognition by Congress that you must, to some degree, weigh costs to businesses against the needs of handicapped people and then make reasonable accommodations.

So, I would think that is the basis for the distinction that has been made in the regulations.

Mr. McKERNAN. OK. Thank you.

The CHAIRMAN. Thank you. Mr. Armey.

Mr. ARMEY. Thank you, Mr. Chairman.

I would like to return to the grocery stores for a moment, mom and pops. First of all, I would like to thank you for your testimony, Mr. Wenning, because one thing you did emphasize in that testimony is something that is a concern to me at all times, and that is the small margin on which a small business stands. The fact of the matter that even when you consider that cost exists not only in the form of paperwork and dollar expenditure, but in the form of the risk and confusion that we incur and that people starting small businesses are so often people beginning their small business who actually find themselves on an entrepreneurial learning curve.

It is possible that the cost of compliance with all the civil rights legislation may be prohibitive and indeed, don't you suppose, be as it were, the straw that breaks the entrepreneur's back and causes him indeed to desert his intended goal?

Mr. WENNING. Well, I can't say whether it is the straw that breaks the camel's back or just what it is. I do recognize and I think our members recognize, being in the small business sector, the food industry, that there are costs involved with any form of Government regulation, whether it is in the discrimination area or whether it is in any other Government program that they participate in. And that is a cost that is of concern to our members.

So, I think we have gone through the phase in the last decade of the rebellion in the private sector, so to speak, of overregulation and have been trying to moderate that.

Mr. ARMEY. What I would like to do, though, is have a clarification of that cost, because we generally think of cost as peeling off a few dollars and handing it here. But cost to a businessman who is a risktaker living in a world of uncertainty comes in a variety of ways. The cost that comes in the form of additional risk of the possibility of litigation, of the concern of am I or am I not in compliance with regulations, by the most well intentioned of people who simply don't want to do wrong or be accused. This, to me, adds to the risk of an entrepreneurial effort.

Now, let me go back to the mom-and-pop case for a moment. Heretofore, entrepreneurs in a small operation of this nature have been able, if they meet the requirements of a nominal number of employees, to opt out of the Food Stamp Program and thereby avoid compliance costs with the civil rights legislation. Is that correct? If they opt out of accepting food stamps?

Mr. WENNING. They could avoid that cost by opting out, if they didn't want to take, as Mr. Taylor suggests, the alternative methods, yes.

Mr. **Armey**. Now, the wording in H.R. 700 says if Federal aid is extended, rather than if federal aid is accepted. Couldn't a small business entrepreneur now face a very real concern that if indeed I try to avoid these compliance costs and save my business by refusing food stamps, that that action in itself may be construed as a violation of civil rights that brings me in danger of litigation?

Mr. **Wenning**. I would say that that argument, in theory, could be made. I would say that if someone wanted to make that argument, I think it could be—it is a plausible one. But I don't know whether—it depends on who you have who wants to represent you on the plaintiff's side.

Mr. **Armey**. There is a lot of uncertainty that is possible, perhaps even as much uncertainty or more uncertainty as we had prior to the *Grove City* case.

Mr. **Wenning**. I think we tried to point that out in our testimony, that there was uncertainty there.

Mr. **Taylor**. May I comment on that one, Mr. Armey?

Mr. **Armey**. Very quickly, because my time is limited.

Mr. **Taylor**. Well, I would say there is no possibility that a grocery store operation that does not take aid could be construed to be covered under the "is extended" language. That is language that is taken directly from the regulations, and if there is some uncertainty about it, I am sure the Congress can clear it up.

Mr. **Armey**. You certainly don't see anything specifically in H.R. 700 that would give me, as a potential entrepreneur, any confidence that I will not face that kind of a choice?

Mr. **Taylor**. I would have to say, with due respect, I think it is the most strained kind of interpretation of the law.

Mr. **Armey**. Is it?

Mr. **Taylor**. But if it creates a problem, I am sure that problem can be resolved. And I would also point out that, as has been indicated numerous times before, mom and pop really don't have—if they don't have more than 15 employees, don't have obligations under the law even if they take the assistance right now.

Mr. **Armey**. Well, these fears and concerns are reality based, and in order to demonstrate I would like to ask Ms. Polivy: What civil rights violation was Grove City charged with?

Ms. **Polivy**. Grove City was charged with violating the regulations which required every recipient of Federal financial assistance to file a title IX assurance form. The whole case arose because Grove City said they would not file such a form.

Mr. **Armey**. Did Grove City directly receive any Federal financial aid?

Ms. **Polivy**. The Supreme Court said yes.

Mr. **Armey**. The Supreme Court said they did?

Ms. **Polivy**. The Supreme Court said that by accepting BEOG's that that was Federal financial assistance within the meaning of the statute.

Mr. **Armey**. Well, wouldn't then the logical thing for Grove City College to do, if they wanted to—by the way, a small college is a small business on a small margin trying to stay alive, and I have seen enough of them to know how much they struggle to stay alive.

Wouldn't it be wise, then, for Grove City to simply have a policy that stated they will not accept any students who wish to enroll with the benefit of Federal financial aid?

Ms. **Polivy**. Grove City would have been free to say that. The reality of life, if you, as you said, had a great deal of experience with small colleges, there is not a college in the country virtually that would on a business basis opt to say we will not accept Federal financial assistance in the form of BEOG's and avoid Federal assistance.

There are some small colleges that have made that choice and don't accept it, Bob Jones University being one of them.

Mr. **Armey**. Let me talk about minorities for a moment, because you indicated earlier that roughly 90 to 95 percent of the schools will happily take Federal funding and the regulation to go with it. But there is 5 to 10 percent of the schools, like Grove City, that did opt out afterwards that cherish their independence and their freedom from Government control and regulation to the extent they are perfectly willing to sacrifice Federal money.

It stills seems very clear to me that given the wording of this bill, that those who have had the Federal funding extended to them will be denied that right to exercise that freedom, and I would suggest to you that is a direct attack on a minority.

Ms. **Polivy**. Mr. Armey, if I may, with all due respect, concur with Mr. Taylor in his earlier response to you, I would only add that as an attorney in private practice I wouldn't take that case on a contingency.

Mr. **Armey**. You wouldn't take which case?

Ms. **Polivy**. I would not take the case of a potential plaintiff who came to me and said that by having in the statute the phraseology of Federal assistance being extended that it covers a potential plaintiff who does not take the money.

Mr. **Armey**. Would you then advise a school like Grove City to either shut down or comply with full and all Government regulations?

Ms. **Polivy**. I would advise Grove City, if they chose to avoid the reach of the Federal statute in this area, that they not take the money. And you cannot imply coverage of an entity that does not take money.

Mr. **Armey**. If we passed this bill, what do you think is the possibility that some organization of the Federal Government will come back to Grove City and say, since the financial aid was extended, offered, you are now not in compliance, and put them right back in the hot seat where they were before?

Ms. **Polivy**. On the basis of witnessing the enthusiasm of the Federal administrative establishment in enforcing the civil rights laws in the last 20 years, I would say zero to minus none.

Mr. **Armey**. Well, they were very enthusiastic because there was no accusation of a violation of civil rights or of discrimination lodged against Grove City, was there?

Ms. **Polivy**. Yes, there was. Grove City affirmatively refused to file an assurance form that was required of all Federal financial recipients.

Mr. **Armey**. What they refused was to put themselves under the surveillance and regulation of a Federal agency.

Ms. **Polivy**. Yes, but they took the money.

Mr. **Armey**. They took what money?

Ms. **Polivy**. They took the students who received BEOG's, thereby receiving the benefits, which is what the Supreme Court held.

Mr. **Armey**. And my point is that this bill is designed to extend it and make it clear that they don't have the right to refuse to take the money.

Ms. **Polivy**. I would respectfully disagree with you, sir, and suggest to you that there has been not one shred of testimony that has indicated that that is the intent of the bill or the intent of the proponents of the bill.

Mr. **Armey**. Then I would imagine that you would be happy to come here and testify in favor, then, of an amendment of this bill that replaces the word "extended" with the word "accepted." Would you be willing to accept a change of that nature?

Ms. **Polivy**. I think that what you are asking tracks the regulatory phraseology that has been accepted for years. If there is any reason to believe that that regulatory phraseology is not understood, will cause difficulty, will impede the operation of this bill, then I would agree with you. But up until this point, sir, I have not seen such a demonstration.

Mr. **Armey**. Well, Mr. Taylor has already testified to the gross confusion that we had prior to *Grove City*. And, of course, I am concerned about confusion of this nature, and it seems to me, Mr. Taylor, that since your objective is to diminish the confusion that such a change in this bill would do a great deal to alleviate confusion, concern, risk, and cost.

Mr. **Taylor**. I think it is possible to reach complete clarity on this point, Mr. Armey. I would only add that I don't think I was testifying to gross confusion before the law. I am not sure in what respect you are——

Mr. **Armey**. Well, I understand that your testimony was that there was a tremendous amount of confusion before the law, and as I understood *Grove City*, by the way, I thought *Grove City* ended the confusion, drew a line on the limits of Government control and intrusion. And now you are back to endorse this bill, as I understand, because you think it will resolve the problem of that confusion.

Mr. **Taylor**. I guess I would say that it seems to me, sir, we are proceeding from somewhat different policy perspectives on this matter. I do not—you see, we had these arguments back in 1964 and again in succeeding years about whether there was some interest of privacy or private property that would allow an institution like Grove City College, which received Federal funds, to continue to discriminate on grounds that they were fiercely independent or something else.

Mr. **Armey**. Well, now wait a minute.

Mr. **Taylor**. And I think the Congress resolved that question.

Mr. **Armey**. Excuse me. I must interrupt here. I still have not heard one shred of testimony that Grove City engaged in any discriminatory actions.

Mr. **Taylor**. Well, what you are talking about——

Mr. **Armey**. Were they charged with any discriminatory actions or any violation of civil rights?

Mr. **Taylor**. What you are talking about is an assurance of compliance which exists under so many Federal laws which, I must say, are less significant and more trivial than the basic requirement that you not discriminate against people.

Mr. **Armey**. What you are talking then is that they must prove their innocence before the fact. In other words, they were innocent parties, they had not discriminated, they had not violated the Civil Rights Act, they had not been charged with such activity, but they failed to prove themselves innocent.

Mr. **Taylor**. No, sir, I don't agree with that characterization. An assurance of compliance is simply a device that agencies which are faced with hundreds of thousands of recipients use to try to identify where there may be a problem in the law. They were not required to prove their innocence. If they had filed the assurance of compliance, then they would have been investigated only if there had been a complaint or some evidence had come to the attention of the agency that they were engaging in discrimination.

Mr. **Armey**. I appreciate your patience with me because I am new to the business of Government, and I don't always understand how the Government works. Is an assurance of compliance, then, something like a loyalty oath? You know, is this what you want?

Mr. **Taylor**. It is not a loyalty oath. It is exacted of a business, or a corporation, or a college to say that it is and will act in compliance with the law. It does not ask for a profession of political belief one way or the other. I think that is a distinction that one could make without an awful lot of difficulty, and I guess I would suggest that in areas of mine safety or income tax, nobody would be suggesting any problem today if one was asked to provide an assurance that one was complying with the law.

Mr. **Armey**. I would like to, because I know my time is limited—Mr. Wenning, does your association have affirmative action programs, either internal to your own organization or that you participate in, that encourages minority small business development?

Mr. **Wenning**. We do not have a program internally within the association.

Mr. **Armey**. Excuse me. I am sorry, Mr. Wenning. I meant Mr. McEwen.

Mr. **Wenning**. OK.

Mr. **McEwen**. Do we have what now?

Mr. **Armey**. Does your association have programs of your own or others that you participate in to encourage minority small business?

Mr. **McEwen**. Sure. Most of our member companies do have those types of programs, sure.

Mr. **Armey**. And does it create entrepreneurial opportunities for your minority entrepreneurs and employment for your entrepreneurs?

Mr. **McEwen**. In some cases, yes.

Mr. **Armey**. Is it possible that the scenario that I ran out earlier, the fear, and the costs, and the risks, the uncertainty that might come from an act of this nature might indeed impair those efforts?

Mr. **McEwen**. It could but it wouldn't be because of the act in itself. It would be because of the multiplying effect of the act and other things that they are having to deal with. I wouldn't characterize the act as being the death knell for minority business and so on if we did that.

Mr. **Armey**. Now, wait. We know we live and die by the margin.

Mr. **McEwen**. Yes.

Mr. **Armey**. And so when I use the expression, a single straw on the margin, that single straw can be very definitive.

Mr. **McEwen**. Well, in theory you could be right. But let's talk about the difference between theory and reality. And it goes back to part of the problems we have had in the past. These same mom and pop stores that you are talking about, under other statutes and/or other local regulations and so on, are covered and are supposed to be doing some of this anyway that this talks about.

But the fact is, just sheer numbers, let's talk about the regulatory numbers. Most of this is even covered by many of the other statutes.

By sheer regulatory numbers in Government and so on, we don't get covered, we don't get looked at, not because we are not covered but because of just the physical limiations on the numbers of people that are out there. And so, part of what we are talking about, in theory, is academic.

But the fact is, if you are that mom and pop store that happens to be singled out if this bill is passed, sure, what you are saying could happen. I mean, there is no ifs, ands, or buts about it.

I don't know how else to answer that.

Mr. **Armey**. Well, this is a matter of grave concern to me because I am looking for the optimal opportunity environment we can find, and if we have legislation that jeopardizes the ability of a business to stay in business, then I believe we can do great harm.

Well, gentlemen, I know I have probably tried your patience, and, Mr. Chairman, I appreciate your patience, and I am sure the other members have many questions, as well.

The **Chairman**. Thank you, Mr. Armey.

Mr. **Fawell**.

Mr. **Fawell**. I think what I have are more observations, and I will try to be very brief.

It seems to me—and I have no problem personally in regard to the institutionwide concept. I gather not anyone really does have that. The questions are always, I think, indicative of our—at least certainly my ignorance, first of all in reference to these four civil rights statutes, when are private entities now covered. And I know that is a big question.

But I think it would relieve a lot of us—for instance, I have learned something today about the mom and pop stores, that apparently our regulations, based upon the number of employees and so forth and so on, that does eliminate them. Whether that would satisfy people or not, I don't know.

But that is the first inquiry, I guess, that I would make. And, Mr. Chairman, perhaps the overworked staff on this committee could help supply that kind of information so that we have a base knowledge of the civil rights statutes.

I am an attorney myself, but I certainly haven't delved in that enough to be able to really have a working knowledge of what is involved right now. That would help a great deal, because we are not, certainly, trying to alter, I gather, the existent law in reference to who may be covered and to what extent.

Perhaps, Mr. Taylor—I think we had a short conversation on this subject over the phone.

Mr. **Taylor**. Yes, sir. If I understand your question, it was: What private entity is covered and what was the extent of their coverage.

Mr. **Fawell**. As it is right now, for instance. And I think like 504 has certain exceptions in statute and/or regulation, and I suppose title VI, title IX, et cetera.

Mr. **Taylor**. Well, I would say, if I understand the question correctly, that private entities certainly have been covered if they receive Federal financial assistance. They have been covered under these four statutes.

The question to be resolved at the moment is the extent of coverage of a given entity, such as a corporation, given the *Grove City* decision which narrowly construes what part of an entity might be covered, and that is really what the debate has been all about.

As to coverage of private entities which do not receive Federal funds, I think I tried to indicate earlier that many of these entities are covered under particular statutes like the Fair Employment Law, title VII, or under the Executive order. But there are some which do not have obligations, and the example that I—unless they receive Federal funds, and the example that I used was that there is no protection for handicapped people in fair employment unless you have Federal funds or unless there is a Government contractor involved.

Mr. **Fawell**. I guess I am assuming just to make it a hypothetical question, assume that indeed there is Federal assistance, though I know a lot of people are wondering just what does that really mean. But assuming that that is so, nevertheless there are a number of exemptions that still allow certain private entities to still opt out of these particular four civil rights acts to which we are making reference. And that is really my question.

I would like to know what all those exemptions are that now exist that may relieve a lot of our fears or those fears that I have heard expressed.

Mr. **Taylor**. Well, let me mention a couple of the exemptions, and we could provide you with a more complete list.

As you suggested——

Mr. **Fawell**. That may be better, if you could supply something like that.

Mr. **Taylor**. Sure.

Mr. **Fawell**. I wouldn't want to take up the time of the committee to go through all that. But if something like that could be given to us, at least it would help me a great deal and I suspect others, too, because we are worried about—and Mr. McKernan brought up the fact, what in this act or proposed legislation would trigger a broadening of the jurisdiction, of the coverage?

And to start with the very base of knowing indeed what that coverage is right now, assuming Federal assistance, would be very helpful.

Then the second question is: Indeed, what in this act does trigger a broadening of coverage?

It would seem to me that if any one area can be referred to in that regard as being the triggering entity, it would be the fact that we are redefining program and activity. We are now multiplying them. The entire institution, all of its activities are now going to be covered, not those that just pertain to a singular program or activity.

That being the case, then as had been brought out, people might consider whether they want to take a JTPA Program that might trigger the entire institution and so forth and so on.

But it is in that area where I would suggest that, along with your comments where you said it makes sense for Congress to speak clearly and specifically in reference to, for instance, termination of funds coverage in this act, and you went on to say that the amendment in one area can indeed affect the other areas.

I would suggest that perhaps that is a basis, a substance for a number of people now asking the question, and I think this is what some of the witnesses are saying, that with the great multiplication of activities now which are now going to be covered, we are going to have a lot more cases.

You also indicated that the corporate coverage has not received a great deal of judicial attention, so we are really dealing with perhaps a high degree of ignorance in regard to what is or is not going to be covered.

In that sense, then, I would think we might want to think seriously in reference to putting into statutory form some of these questions that are asked, who is indeed an ultimate beneficiary, who indeed is deemed to be receiving Federal assistance, what do we mean by Federal assistance. Perhaps, I am suggesting, that because of the great multiplication of programs and activities and therefore there is much more importance in regard to the questions of just what is Federal assistance.

It might be a good idea for us to try to make that very clear at this point, as we are doing in reference to speaking clearly in regard to what is the termination of funds question, and avoiding a great deal of lawsuits on this and helping make a lot of attorneys rather wealthy in handling those kinds of cases.

Would you speak to that point?

Mr. TAYLOR. I would, I guess, make a couple of observations right now.

One, of course, is, you understand that it is our view, very strongly held, that this is not multiplying the numbers of entities that are covered, but simply restoring coverage that existed, and was well understood to exist prior to the *Grove City* case.

Mr. FAWELL. Excuse me. May I just say that in my review of the cases, I always construed program and activity to mean program and activity, and I thought the Federal cases were—I thought the Supreme Court decision, although as a matter of policy I think it ought to be changed, nevertheless I think correctly construed what was literally there. And I can well understand the new bill here trying to zero in and redefine program and activity, because if you leave it that way, if you say "program or activity receiving Federal assistance," I really don't know how people can construe program and activity to be anything more than program and activity.

So, I don't quite join in your view that we are trying to get back to what everybody thought it was before. As a school attorney, for instance, I never took that view in advising my clients.

Mr. TAYLOR. Well, in the area of schools, just to use that as an example, I think there has been no question over a period of many years that public school systems were covered in their entirety even if it was only one school or a handful of schools that were receiving funds.

But I guess we could probably spend a lot of time on that question. That is what got us here in the first place.

As to your other suggestion, I think that clarity is certainly to be desired, and I did say that.

I am afraid that what we have discovered is that the simple justice that President Kennedy talked about when asking for title VI in the first place has turned out to be quite complex. And if one were to try to incorporate in statutory language all of the provisions and interpretations with respect to Federal financial assistance, recipients, and other matters, this bill would begin to look like the Tax Code. And as we know with the Tax Code, even putting all of that into the language doesn't stop litigation.

So, I think Congress has got to make a prudential decision about how much it puts into the statute, and I really don't think there has been significant controversy over what is Federal financial assistance, what is a recipient and what is an ultimate beneficiary. So, I don't see a need really to address those questions in the statute.

I think the one question that *Grove City* makes necessary to address in the statute is the question of coverage of an entity that is a recipient.

Mr. FAWELL. Just one last question. Would you then be clear in regard to whether or not food stamps is Federal assistance, disaster loans, price supports, research contracts, for instance, and that sort, JTPA? Would all of that, then, clearly in your mind qualify as Federal assistance?

Mr. TAYLOR. Well, I think there are clear answers to almost all of those questions, with respect to farm price supports, for example.

Mr. FAWELL. Do you have any problem with any of those?

Mr. TAYLOR. Now, if there is a question with respect to one or more of those, I think if the Congress feels itself able to address the question, it ought to address it very clearly in legislative history.

If you address one question in the statute in this area, you may be raising a whole host of other questions for interpretation about, you know, why did Congress leave this one out. But I think if there is a question that Congress wants to address because it feels it is unclear and that Congress can bring some clarity, certainly, but address it in the legislative history rather than in the statute itself.

Mr. FAWELL. Well, again, my final comment would be that I have heard so many fears being expressed, maybe real or imagined, that I think there is some credence to the thought that—well, as to what I think these two gentlemen are talking about—let's make it clear so that we don't end up—for instance, I recall years back when suddenly we found we had apparently passed legislation that you couldn't have the mother/daughter or the father/son activities and things of this sort, where the Congress I think was rather embarrassed by not thinking ahead a bit and trying to clarify these points. And we eventually had to do so, I gather.

I think there is some basis, and it may be the thing that would save this legislation, that we do recognize, because there is a multiple occasion now of coverage and a clear expansion of coverage that certainly is setting aside the Supreme Court limitation, that I think there is some reasonable basis for these questions. And if they are not answered, I think we may find that it will be bogged down and perhaps not make it.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you. Mr. Dewine.

Mr. DEWINE. Thank you, Mr. Chairman. I will try to be brief, Mr. Chairman.

A question to Mr. Wenning and Mr. McEwen. Would you agree with the comments that have been made by the other witnesses in regard to the term "extended"? In other words, that "extended" is the word in this particular bill, that that does not mean the offering of assistance, but what is required is the acceptance. Would you agree with that? Or is the word subject to some ambiguity?

Mr. MCEWEN. It is subject to some ambiguity. I am not smart enough to define that the way it is written, because I don't—extended to one person is acceptance to another.

The problem that I have, the problem that I think that is keeping us from being in concensus here is the fact that there are some time-honored definitions and there are some accepted principles that are being called to question now because we are talking about such things as congressional intent and what is meant.

A good one is this recipient thing that we were talking about.

To keep from belaboring things, to answer your question specifically, I don't know that I could agree or not because I don't know whether we all agree with that.

Mr. DEWINE. OK. Mr. Wenning?

Mr. WENNING. I go along with Mr. McEwen. I would have to look at it and study it a little bit more before I would want to give you a response right off of whether I disagree or not.

Mr. DEWINE. Mr. McEwen, I think everybody else on the panel just about has given their opinion about the food stamp question. Would you like to comment on that?

Mr. MCEWEN. Sure, I always have a comment. I may not be right, but I will comment.

Mr. DEWINE. Just to preface it, does H.R. 700 change the law?

Mr. MCEWEN. It won't change the law, in my opinion. What it will change is the perception of what the law says, and it gives room for implementing regulations that may change the way we do business.

I guess that is the thing. I am not so much concerned about the law and most of this, much of the problems that we have in civil rights implementation has nothing to do with the regulations or the law—I mean the laws or the statutes. It is the implementing regulations.

And because we are putting heretofore different definitions to things like recipients and that, that is where my concern lies.

Mr. DEWINE. So you think that the acceptance of food stamps by a small grocery store that has five employees would, bring them under this statute?

Mr. MCEWEN. It could, yes.

Mr. DEWINE. A question for the other two witnesses, Mr. Taylor and Ms. Polivy.

There has been—at least I have seen a demonstrated need in front of this committee in regard to discrimination within—sex discrimination within educational institutions. And I think there is almost a concensus in Congress to do something about that.

I have not seen yet a demonstrated—at least in testimony presented to this committee—a demonstrated need once we get beyond that.

And I wonder, I would invite you to submit to this committee specific examples, and I would also briefly, in the time we have, ask you to comment, is there a demonstrated need for extending Federal involvement into these other areas that we have been talking about?

Mr. TAYLOR. Yes, Mr. DeWine, in some of my remarks this morning I have tried to indicate that there still is race discrimination in this country on the part of people who receive Federal financial assistance. There still is discrimination on the basis of age. There still is discrimination on the basis of disability.

It is probably a part of the record already, but a number of groups prepared specific examples of problems that would be addressed in a document called "Injustice Under the Law—The Impact of the *Grove City College* decision on Civil Rights in America," indicating both applications that have already been made of the *Grove City* decision in other areas, other than education and other than sex discrimination, and also indicating potential applications.

So, if that is not a part of the record so far, I would submit it to your consideration.

The CHAIRMAN. Without objection, it will be submitted in the record at this point in response to Mr. Dewine's question. The Chair would like to make mention, however, that it has heretofore been inserted into the record, but I am sure that repetition in this instance is desirable.

Mr. DeWine.

Mr. DEWINE. Yes; if any other witnesses want to comment—Mr. Wenning?

Mr. WENNING. I wanted to come back to one of your original questions about the food stamp program.

Mr. DEWINE. OK. I didn't mean to leave you out. I am sorry.

Mr. WENNING. It is from the questions and answers that were written to the General Counsel of USDA, and his answer is:

> The department does not currently treat food stores which redeem food stamps as recipients of federal financial assistance which are subject to the requirements of federal anti-discrimination law. There are no regulations or instructions that define these stores as recipients and the agreement between the department and the stores concerning their participation in food stamp programs does not contain any reference to the requirements of the anti-discrimination laws.

So, in that definition, and as our interpretation and our current practice, we would say that we are not a recipient of Federal assistance and should not be maintained under that coverage.

Mr. McKERNAN. Would the gentleman yield, just to follow up on that?

Mr. DEWINE. Yes.

Mr. McKERNAN. That was originally my question. If you could just answer the question that I started my whole line of questioning with, which is why you think that the change in this particular statute is going to trigger that coverage?

Mr. WENNING. Because of the analogy that was given in my testimony that if we were, in fact, treated like Grove City was, that their interpretation would be—and as Mr. Taylor suggested, that we would in fact be a recipient under that interpretation.

And our interpretation is that we are more like a general assistance program, similar to Social Security and food stamps, and in this particular instance we would not be considered a recipient of receiving financial assistance.

Mr. McKERNAN. Would your concern be alleviated if we made sure that that part of the existing law was not changed?

Mr. WENNING. Yes, sir.

Mr. McKERNAN. Thank you.

Mr. DEWINE. Mr. McEwen.

Mr. McEWEN. I was going to give you some evidence for the question that you asked earlier. I think that just looking at title IX right now, by itself, I think that without the provisions for institutionwide application of the anti-discrimination things in title IX, a good example, a very glowing example has to do with women athletics. I mean athletics for women in colleges, which up to now, before title IX, wasn't getting very—was getting short shrift, in my opinion.

If you look, as a result of title IX, what schools were required to do in terms of putting more emphasis in something like athletic programs in schools, you have seen a growth in those areas, and so on.

Now, I am not calling it discrimination necessarily. I am just calling it avoidance or whatever. But that is a tangible example.

Mr. DEWINE. Mr. McEwen, I think we all agree on that, but that is an example of something that is within the educational field. And there seems, as I said, to be a concensus in the Congress, both sides of the aisle, that we need to do something in that area.

What I am trying to get at, the question to the other witnesses was, is there, is there—I don't know—is there a demonstrated need in the other areas? Because contrary to some of the testimony, I believe that this is a clear expansion of the law. The question is, is that good public policy. That is what I think we have to deal with.

Mr. McEWEN. I was addressing the wrong question. I would have to think about that.

Mr. DEWINE. Well, do you have examples outside the educational area? I don't want to put you on the spot. But, I mean, if there are——

Mr. McEWEN. No; I am not on the spot. I am trying to give an informed response, which is rather difficult sometimes. But I am sure if I thought long enough, I could. I just don't have one at the tip of my tongue right now.

Mr. DeWine. OK.

Ms. Polivy. I think there have been traditionally examples given that come to mind quickly. In the hospital area, for example, where you can have a portion of private hospitals covered because the pulmonary unit receives Federal financial assistance, but the geriatric unit doesn't.

Beyond title IX, in the education area, where you have to be concerned about resegregation of school systems, and under *Grove City* you could have an interpretation that said if you had an audiovisual program in a school where one projector was given by the PTA and the other by the Federal Government, you could have race discrimination in one classroom, not the other.

Certainly, 504 provides many, many instances where—talking about access for handicapped.

Mr. DeWine. The chairman has indulged me long beyond my time. My point is that you are giving me hypotheticals. I would like to see some hardcore specifics. And if you find them then we will be more than delighted to look at them.

But your examples either, one, go to education, or two, are hypothetical. I mean, we all can envision how discrimination could exist. This committee, to drastically change the law, which is what this will be doing, we have an obligation to see if there is a demonstrated need.

Ms. Polivy. If I may, Mr. Chairman, I think my point was that this would not change the law. And aside from that——

Mr. DeWine. I don't see how any attorney, with all due deference to the witness, can look at this and think that this is not a drastic change. I think the only question, Mr. Chairman, is as a matter of public policy do we want to make this drastic change. I think the jury is still out on that question.

Thank you, Mr. Chairman.

The Chairman. Thank you. Mr. Hayes, do you have a question?

Mr. Hayes. I don't have a question. In the interest of time, my comment is going to be very short.

I am going to study and scrutinize the prepared statements of the witnesses, but I must say, from what I have heard so far and read so far, you make it very clear at the outset that you are against sin as it relates to discrimination. But you say, in effect, if it is going to cost you time and money, hold or Isn't that right?

The Chairman. Do you want them to shake their head whether they agree or disagree?

Mr. Hayes. I just want to say, if you read the statement of the National Association of Manufacturers, it is quite clear:

> Initially, we would like to state that the national association opposes any discrimination in whatever form, however manifested, against persons based on race, sex, color, national origin, handicap, religion or age.

Then they go on to say:

> However, NAM is concerned that H.R. 700 as written would do far more than restore the status quo for public and private employers prior to *Grove City*.

Mr. McEwen. OK. Since you have cited me specifically, I will answer briefly. Yes, we are against sin. Yes, we want to wait, we want to get some things changes. But sure, I think that we stand behind that antidiscrimination statement.

Again, I would like to reemphasize that being in favor of some changes of some specific areas does not mean we are against the bill. We are not against the bill. We think the bill is better than the one last year.

We still think that in all due respect, when we are all dead and gone, or if we are all dead and gone 30 years from now, I don't want it to be in a situation on this particular bill where the debate is, what was the intent, the way we have seen it in some other legislation.

It should be clearly stated what the intent and the specifics are, so that we don't have to do that. That is my concern.

Mr. HAYES. Thank you.

The CHAIRMAN. Thank you. The Chair has been tolerant of all the views this morning and has extended the time because I think the witnesses have been excellent in presenting their differing points of view. I think that has been very helpful to the committee. We wish to commend all of you, and with our thanks, that ends this particular panel.

The most patient individual today has been our distinguished colleague from New York who has a statement to make to the committee. Mr. Garcia has been patiently waiting for several hours. He has a statement to make and the Chair will give him the opportunity at this time to present his statement.

Mr. GARCIA. Mr. Chairman, thank you. I think my statement will be all of 6 minutes. If I can make it in 5, I will do that. But now I know, Mr. Chairman, how other witnesses feel as they are sitting listening to the people like myself asking questions. Of course, we have been here for close to 2 hours, and I must tell you, I thought the panel was quite good.

The CHAIRMAN. I must state, because there has been a point raised, that the witness was not on the schedule, as you well know. He is a colleague, and the fact that he is not on the scheduled program, I hope, will not be a violation of some rule around here.

With that, Mr. Garcia, you are bona fide now. You have been sanitized.

Mr. GARCIA. Well, all I can tell you is my staff is fired because I was under the impression that—well, anyway, Mr. Chairman, I guess I will be somewhat of a devil's advocate today because I think it is essential.

Before I start, let me wholeheartedly congratulate not just you but the Judiciary Committee, because I think on balance and in substance this is a very important piece of legislation.

There is one aspect I would like to address that you may or may not agree with, and that is only because I would hope that this committee would sort of give some thought to what I am about to—my prepared statement, only so that we can ensure that all young people in the future have equal access.

I appreciate this opportunity to testify regarding my views on the Civil Rights Restoration Act of 1985.

We are seeking a solution today for probably the most important civil rights issue of this decade, the right of an individual to attend the college of his or her choice without regard to race, gender, age, or physical ability.

We do this in part by broadening the definition of Federal financial assistance to include an entire institution. So, if any part of the institution discriminates, the whole institution could face fund termination.

My colleagues, discrimination is evil in any form, but it is even made worse with regard to educational access if used to make a difference in treatment on any basis other than individual merit. And access to education is what we are talking about in this legislation.

That is, whether all people will have an equal opportunity to attend the educational institution of their choice.

For 20 years the Civil Rights Act of 1964 has enabled this country to retain and reaffirm its commitment to civil rights. That act states that:

> All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation—with our discrimination or segregation on the ground of race, color, religion, or national origin.

I emphasize "all persons". Like the United Negro College Fund advertisement says, "A mind is a terrible thing to waste."

Think of it. Disallowing education to even one person simply because the student is denied access to the college of his or her choice.

It is not just the issue of education that is involved. It is freedom. For without choice there is no freedom.

We have not tolerated this in the past and we will not tolerate it in the future.

I represent a minority district. That is, the population of my district is 42 percent black, 53 percent Hispanic. So, I know quite well the problems of access and freedom of choice minorities face in obtaining an adequate education.

Fifty percent of blacks and 40 percent of Hispanics are dependent on student financial assistance. But access to education is not just a minority problem. It is a middle class problem, as well.

Fifty percent of all students are dependent on Government assistance for education. The educational opportunities these figures represent are overwhelming, and the Federal Government should not be in the business of contributing to the loss of educational opportunity for even one individual.

This legislation, as I said before, is positive in that direction. I am, however, concerned that theoretically—and I would like to, Mr. Chairman, underline that word, "theoretically"—this legislation could be contributing to the very denial of access and freedom of choice I mentioned earlier.

Let's see if I can explain. Since the introduction of this bill and as a result of the Supreme Court decision in *Grove City,* I am aware of two colleges that have decided not to accept student financial assistance.

I am told, and you can correct me if I am wrong, that there may be as many as 25 colleges that only receive student financial aid. If these 25 colleges follow the lead of the other 2, it could mean that many students who wish to attend these colleges will be unable to use their Federal assistance at these institutions.

Consequently, this legislation may be contributing to the loss of educational opportunity for an unknown number of students.

Another area of concern I have with the bill is in the situation where a school that receives no financial assistance except through financial aid is found guilty of discrimination, let's say in their biology department. I am told by the Judiciary Subcommittee that the final recourse is to cut off student financial aid.

Thus, if access and choice to students who need assistance is denied, it could mean that the cure being proposed would be far worse than the disease which we, as sponsors of the bill, are trying to correct.

When we consider that at any given time, at any given college, 50 percent of the students are on financial Federal assistance, we could have serious trouble. And when we consider further that at least 40 percent of all minorities are dependent on Federal assistance, we have to ask ourselves just who is it we are trying to protect.

Last year, Dr. Roche, who is the President of Hilldale College in Michigan, stated during the session on this bill:

> The burdens, the penalties and the inconveniences could rest most heavily on the individual citizens who look to their entities for services and, as usual, the citizens who are the most disadvantaged could feel the effects most sharply. More often than not these could be racial minorities or women or handicapped or the elderly, the very people the bill purports to protect.

I urge my colleagues, as they develop this bill, to heed these concerns and if at all possible to seek solutions to address these issues.

I certainly would be glad to work with you on these very real situations.

Mr. Chairman, education is the most precious tool the lower and middle classes have at closing the gap between the rich and the poor. We must do everything we can to assist in shrinking that gap.

What we are talking about, in a sense, are not dropouts, but lockouts. That is, kids who are not able to exercise their freedom of choice relative to the college that they desire to attend. These lockouts indicate an inadequacy of the educational system, not an inadequacy of the human potential.

We must do everything we can to maximize the potential. This legislation, with a few minor adjustments, will assist in these efforts.

Mr. Chairman, that concludes my remarks, but just let me once again repeat, I don't know what the solution to this is but I am just hopeful that solutions exist.

Maybe I am overexaggerating. I don't know. But what I do know is that the potential is there and I would hate to have us go back to a situation where schools once again are using the Federal financial aid as an excuse, because most young Hispanics and most young blacks need and depend on that Federal assistance. But they just say we don't want the Federal Government involved here, and by that in itself they will be excluding minorities.

I think that all minorities should be able to attend any college that they desire if they are qualified to enter into that institution.

I am not asking for any more and not asking for any less.

I think I took 7 minutes and it is 1 minute over what I said, or maybe 1½ minutes, but I thank the Chair very much.

PREPARED STATEMENT OF HON. ROBERT GARCIA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Honorable Chairmen, I appreciate this opportunity to testify before you regarding my views on the Civil Rights Restoration Act of 1985. We are seeking a solution today for probably the most important civil rights issue of this decade: the right of an individual to attend the college of his or her choice without regard to race, gender, age or physical ability. We do this in part by broadening the definition of federal financial assistance to include an entire institution, so if any part of the institution discriminates, the whole institution could face fund termination. My colleagues, discrimination is evil in any form, but it is made even worse with regard to educational access if used to make a difference in treatment on any basis other than individual merit. And access to education is what we are talking about in this legislation; that is, whether all people will have an equal opportunity to attend the educational institution of their choice. Indeed, for 20 years, the Civil Rights Act of 1964 has enabled this country to retain and reaffirm its commitment to civil rights. That act states that "all persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation...without discrimination or segregation on the ground of race, color, religion, or national origin." I emphasize "ALL" persons. Like the United Negro College Fund advertisement says, "A mind is a terrible thing to waste". Think of it, disallowing education to even one person simply because a student is denied access to the college of his or her choice. It is not just the issue of education that is involved, it is freedom. For without choice, there is no freedom. We have not tolerated this in past and we will not tolerate it in the future.

My colleagues, I represent a "minority" district. That is, the population of my district is 42% Black and 53% Hispanic. So I know quite well the problems of access and freedom of choice minorities face in obtaining an adequate education. 50% of Blacks and 40% of Hispanics are dependent on student financial assistance. But access to education is not just a minority problem. It is a middle class problem. 50% of all students are dependent on government assistance for education. The educational opportunities these figures represent are overwhelming, and the federal government should not be in the business of contributing to the loss of educational opportunity for even one individual. This legislation is a positive step in that direction.

I am, however, concerned that theoretically at least, this legislation could be contributing to the very denial of access and freedom of choice I mentioned earlier. Let me explain. Since the introduction of this bill and as a result of the Supreme Court's decision in Grove City, I am aware of two colleges that have decided not to accept student financial assistance. I am told there may be as many as 25 colleges that only receive student financial aid. If these 25 colleges follow the lead of the other two it could mean that many students who wish to attend these colleges will be unable to use their federal assistance at these institutions. Consequently, this legislation may be contributing to the loss of educational opportunity for an unknown number of students.

Another area of concern I have with the bill is in a situation where a school that receives no federal assistance except through student finanical aid is found guilty of discriminationin, say, in the biology department. I am told by the Judiciary subcommitte staff that the final recourse is to cut off student financial aid. Thus, if access and choice to students who most need assistance is denied, it could mean that the cure proposed would be far worse than the disease which we as being proposed would be far worse than the disease which we as sponsors of the bill are trying to correct.

When we consider that at any given time, at any given college, 50% of the students are on federal assistance, we could have serious trouble. And when we consider further that at least 40% of all minorities are dependent on federal assistance, we have to ask ourselves just who it is we are trying to protect from whom. As Dr. Roche, the President of Hillsdale College stated during last session's hearings on this same bill "the burdens, the penalties and the inconveniences would rest most heavily on the individual citizens who look to these entities for services...and, as usual, the citizens who are the most disadvantaged would feel the effects most sharply. More often than not, these would be members of racial minorities, or women, or handicapped people, or the elderly...the very persons this bill purports to protect."

I urge my colleagues as they develop this bill to heed these concerns, and if at all possible, to seek solutions to address these issues. I certainly would be glad to work with you on these very real situations.

My good Chairmen, education is the most precious tool the lower and middle classes have of closing the gap between the rich and the poor. We must do everything we can to assist in shrinking that gap. What we are talking about in a sense are not dropouts, but lockouts; That is, kids who are not able to exercise their freedom of choice relative to what college they desire to attend. These lockouts indicate an inadequacy of the educational system; not an inadequacy of the human potential. We must do everything we can to maximize that potential. This legislation, with a few minor adjustments, will assist in these efforts.

The **Chairman**. Thank you, colleague Garcia. I just want to clearly understand your position.

You are not in opposition to H.R. 700, as such. You raise some apprehensions as to its impact as written. Is that correct?

Mr. **Garcia**. That is right.

The **Chairman**. That is clearly what you have said.

Mr. **Garcia**. And I will support the bill enthusiastically, whether I am right or whether I am wrong. I just bring that up as a point of reference, something else to think about in committee when you are marking up the bill. I hope I am all wet, but that possibility to me exists, and so I just want to make sure that you folks are aware.

The **Chairman**. As one who has been privileged to attend, and participate in, several hearings on this issue throughout the country, I have noted that those in opposition to H.R. 700, based on the extent of its coverage, have suggested the Senate bill, H.R. 272, as an alternative because it limits itself to education. You are not of that persuasion?

Mr. **Garcia**. No.

The **Chairman**. OK. Mr. Armey, you are recognized.

Mr. **Armey**. Thank you, Mr. Chairman.

Mr. Garcia, I read along as you read your statement and I appreciate your concern. It is well prepared. I share that concern and I think it is a very real concern, because over the years—I spent 20 years teaching at the university and many, many years I spent in private schools that operated on a very, very thin margin, just barely stayed alive, and often had minority students who were able by virtue of Federal assistance to attend that school because it was the school of their choice. And I can fully see the possibility of 25 or more schools withdrawing from any participation, and it will be a denial of the right to these young people, and I appreciate your concern and I appreciate your bringing that concern to us.

I hope, as you do, that in markup we can resolve this problem. Thank you.

The **Chairman**. Thank you. If there are no further questions, again, the Chair expresses appreciation to you, Mr. Garcia.

Mr. **Garcia**. Thank you, Mr. Chairman.

The **Chairman**. The next panel will consist of Ms. Marilyn Rose, Jacksonville Area Legal Aid; Mr. Howard Phillip, chairman, Conservative Caucus; Ms. Louise Crooks, vice president of American Association of Retired Persons; Jack Powell, Paralyzed Veterans of America; Mr. Larry Gold, general counsel, AFL-CIO; Ms. Sarah Harder, legislative program chair, the American Association of University Women, and Ms. Brownie Leadbetter, of Little Rock, AR.

Will those witnesses please be seated at the witness table?

Ms. Harder, I understand that you have a plane, perhaps overdue already, but let us begin with you. And we would suggest to the witnesses that brief statements would be appreciated so that we may get through before the next panel is due this afternoon.

But, Ms. Harder, because of your urgency, we will begin with you.

STATEMENTS OF MARILYN ROSE, JACKSONVILLE AREA LEGAL AID, JACKSONVILLE, FL; HOWARD PHILLIP, CHAIRMAN, CONSERVATIVE CAUCUS; LOUISE CROOKS, VICE PRESIDENT, AMERICAN ASSOCIATION OF RETIRED PERSONS; JACK POWELL, PARALYZED VETERANS OF AMERICA; LARRY GOLD, GENERAL COUNSEL, AFL-CIO; SARAH HARDER, LEGISLATIVE PROGRAM CHAIR, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN; AND BROWNIE LEADBETTER, LITTLE ROCK, AR

Ms. **Harder**. Thank you, Mr. Chairman. I appreciate that.

I am Sarah Harder. I was the first title IX officer at the University of Wisconsin, Eau Claire, where I am assistant to the vice chancellor for educational opportunity. And for over 10 years I have worked in university and community to build local partnerships for progressive change which was based upon Federal civil rights law.

I chair the Wisconsin Women's Council, a statutory body which works with the Governor, Legislature and State agencies to implement legal rights for women. And as director of legislative program for the American Association of University Women, I work with members at the local, State and National level to translate the AAUW's responsible public policy positions into meaningful action.

I am grateful for the opportunity to testify today on behalf of the American Association of University Women in support of H.R. 700.

The AAUW commends Chairmen Hawkins and Edwards for these hearings and the expeditious action on this critical legislation.

Mr. Chairman, in the winter of 1981, 17 women met at the Massachusetts Institute of Technology to respond to a Boston physician's contention that purported to demonstrate that college education was hazardous to a young woman's health. Out of that meeting and a conviction to improve educational opportunity for women, the American Association of University Women was formed.

And since its inception AAUW has been committed to expanding opportunities for women and positive societal change. Today our membership exceeds 190,000 with 1,900 branches and 51 divisions across the Nation.

Our members are Republicans, Democrats, and Independents, but despite party affiliations AAUW members have found concensus around the vigorous enforcement of civil rights laws.

With that enforcement in jeopardy, we strongly support the Civil Rights Restoration Act.

You have undoubtedly received correspondence from AAUW constituents in support of this Civil Rights Restoration Act, and we promise that you will receive much more before the legislation is enacted.

Our State leaders have attended and participated in your field hearings this month expressing concern over the impact of the *Grove City* decision on the lives of our daughters, our neighbors and the integrity of our country. But we want you to understand why our members respond so strongly on this legislation.

Because title IX opened educational opportunities for girls and women, it has had particular importance for AAUW.

Not an unwieldy set of Government regulations, title IX instead provided the moral leverage across the country to open blocked admission doors and stop discriminatory distinctions.

Through our project to monitor title IX, members built alliances with school boards and college administrations to address cultural barriers which still exist to discourage girls and women from full participation.

Title IX has been a Federal law which worked, through its clear signal to educational systems of every size and type that discrimination was unacceptable.

It is precisely because title IX has worked and because we have seen at the grassroots level the inch-by-inch progress built on other civil rights statutes that we find the current situation unacceptable.

After more than a decade of unequivocal opposition to discrimination, the U.S. Government has begun to waffle. We know that loss of faith in the Federal Government's enforcement efforts has led many States, including my own Wisconsin, to introduce their own civil rights laws to stop that gap.

And we also know how the *Grove City* decision and the *Consolidated Rail* decision have affected real lives in real institutions, in real communities you represent.

Our worst fears have proven true. The Department of Education has closed, limited or suspended 63 cases in just 1 year since *Grove City*. A case-by-case review shows the Department's failure to act despite their own findings of discrimination.

This refusal to act responsibly on behalf of our daughters, and our disabled and minority community members, in cases where discrimination has been proven to exist is unconscionable.

Further review of these cases also demonstrates severe inconsistencies in the Department's decision to enforce. Some cases have been suspended pending formal Government interpretation of title IX under *Grove City*. And other cases have been closed completely.

So strongly did AAUW object to this treatment that the association has brought suit against the Department of Education for what we believe to be arbitrary action and incorrect interpretation of the *Grove City* ruling. That case, *AAUW, et al.* v. *Department of Education, et al.*, is now pending before the U.S. District Court of the District of Columbia.

As taxpayers, AAUW members are also committed to overturning the program/specific interpretation of title IX in the *Grove City* case. This interpretation is already creating bureaucratic nightmares for education institutions, corporations, and the Federal Government.

Remember that the interpretations we operated on for 10 years were simple: If you get Federal funds, you don't discriminate. That is that.

It is not that we all accepted that mandate, but we understood it.

The process now required to track and pinpoint Federal funds to specific programs takes time, paperwork, person power, and money.

Many institutions won't do it because they have discovered it is not good operation to discriminate. But where the habit of equity is not yet learned, tortuous new processes are being created as rationalization not to act.

For example, at Northeastern University, a student filed a title IX complaint. She said the university failed to take action to redress a sexual harrassment complaint and had no grievance procedure, as title IX required.

Prior to the *Grove City College* decision, the Department of Education, Office of Civil Rights had only to determine that the university received Federal funds.

Now OCR must find whether Federal funds go to the program in which the discrimination is charged. And in this case, it was the economics department located in Lake Hall, a classroom building.

Now, Northeastern had received $2 million from the College Housing Loan Program, and $9.9 million in student aid for 1983-84.

But OCR decided it could not investigate the complaint because Lake Hall, where the alleged discrimination occurred, was not built or renovated with Federal loans.

Ironically, if the alleged sexual harrassment had occurred in student dorms which were renovated with Federal loans, the complaint would have been investigated. This case is one of those on policy hold at the Education Department.

In a time of limited Federal resources, a time of public opposition to excessive Federal spending, a time where the deficit overshadows all congressional debate, we ask: Who is going to fund this new Government bureaucracy or tracking through the redtape? What is the *Grove City* decision costing American taxpayers?

We believe the taxpayers are not only being asked to subsidize discrimination, but we are being asked to fund costly and unnecessary redtape as well.

AAUW believes it was neither the intent nor the spirit of our civil rights laws enacted by the U.S. Congress to encourage costly subterfuge to camouflage discrimination by institutions receiving Federal funds.

In fact, history tells us these laws were created to prohibit subsidy of discrimination and to encourage those receiving Federal funds to serve as models to demonstrate that equity works.

We object to the elaborate speculations offered in opposition to H.R. 700 because example and precedent outweigh speculation.

After 20 years of slow but steady evolution of civil rights enforcement demonstrate why and how these statutes must be reinstated.

We must restore the moral leverage of Federal civil rights law. We urge your favorable and swift consideration of this critical legislation.

Thank you.

The **Chairman**. Thank you, Ms. Harder.

Are there any questions on this side? Mr. Armey.

Mr. **Armey**. No.

The **Chairman**. Any on this side?

[No response.]

The **Chairman**. Then we will excuse Ms. Harder. We understand you have a plane to catch. We hope that you are able to make it.

Ms. **Harder**. Thank you.

[The prepared statement of Sarah Harder follows:]

PREPARED STATEMENT OF SARAH HARDER

MR. CHAIRMAN, I AM SARAH HARDER. I WAS THE FIRST TITLE IX OFFICER AT THE UNIVERSITY OF WISCONSIN, EAU CLAIRE WHERE I AM ASSISTANT TO THE VICE CHANCELLOR FOR EDUCATIONAL OPPORTUNITY. FOR OVER 10 YEARS I HAVE WORKED IN UNIVERSITY AND COMMUNITY TO BUILD LOCAL PARTNERSHIPS FOR PROGRESSIVE CHANGE IN FEDERAL CIVIL RIGHTS LAWS. I CHAIR THE WISCONSIN WOMEN'S COUNCIL, A STATUTORY BODY WHICH WORKS WITH THE GOVERNOR, LEGISLATURE AND STATE AGENCIES TO IMPLEMENT LEGAL RIGHTS FOR WOMEN. AND AS DIRECTOR OF LEGISLATIVE PROGRAM FOR THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, I WORK WITH MEMBERS AT THE LOCAL, STATE, AND NATIONAL LEVEL TO TRANSLATE THE AAUW'S RESPONSIBLE PUBLIC POLICY POSITIONS INTO MEANINGFUL ACTION.

I AM GRATEFUL FOR THE OPPORTUNITY TO TESTIFY TODAY ON BEHALF OF THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN IN SUPPORT OF HR 700, THE CIVIL RIGHTS RESTORATION ACT OF 1985. THE AAUW COMMENDS CHAIRMEN HAWKINS AND EDWARDS FOR THESE HEARINGS AND FOR EXPEDITOUS ACTION ON THIS CRITICAL LEGISLATION.

MR. CHAIRMAN, IN THE WINTER OF 1881, SEVENTEEN WOMEN MET AT THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY TO RESPOND TO A BOSTON PHYSICIAN'S STUDY WHICH PURPORTED TO DEMONSTRATE THAT COLLEGE EDUCATION WAS HAZARDOUS TO A YOUNG WOMAN'S HEALTH. OUT OF THAT MEETING AND A CONVICTION TO IMPROVE EDUCATIONAL OPPORTUNITY FOR WOMEN, THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN WAS FORMED. SINCE ITS INCEPTION, AAUW HAS BEEN COMMITTED TO EXPANDING OPPORTUNITIES FOR WOMEN AND POSITIVE SOCIETAL CHANGE. TODAY THE ASSOCIATION'S MEMBERSHIP EXCEEDS 190,000 WITH 1,900 BRANCHES IN 51 DIVISIONS ACROSS THE NATION. OUR MEMBERS ARE REPUBLICANS, DEMOCRATS AND INDEPENDENTS BUT DESPITE PARTY AFFILIATIONS, AAUW MEMBERS HAVE FOUND CONSENSUS AROUND THE VIGOROUS ENFORCEMENT OF CIVIL RIGHTS LAWS. WITH THAT ENFORCEMENT IN JEOPARDY WE STRONGLY SUPPORT THE CIVIL RIGHTS RESTORATION ACT.

YOU HAVE UNDOUBTABLY RECEIVED CORRESPONDENCE FROM AAUW CONSTITUENTS IN SUPPORT OF THE CIVIL RIGHTS RESTORATION ACT--AND WE PROMISE THAT YOU WILL RECEIVE MORE BEFORE THIS LEGISLATION IS ENACTED. OUR STATE LEADERS HAVE ATTENDED AND PARTICIPATED IN YOUR FIELD HEARINGS THIS MONTH EXPRESSING CONCERN OVER THE IMPACT OF THE GROVE CITY DECISION ON THE LIVES OF OUR DAUGHTERS, OUR NEIGHBORS AND ON THE INTEGRITY OF OUR COUNTRY. BUT WE WANT YOU TO UNDERSTAND WHY OUR MEMBERS RESPOND SO STRONGLY ON THIS LEGISLATION.

BECAUSE TITLE IX OPENED EDUCATIONAL OPPORTUNITIES FOR GIRLS AND WOMEN, IT HAS HAD PARTICULAR IMPORTANCE FOR AAUW. NOT AN UNWIELDY SET OF GOVERNMENT REGULATIONS, TITLE IX INSTEAD PROVIDED THE MORAL LEVERAGE ACROSS THE COUNTRY TO OPEN BLOCKED ADMISSION DOORS AND STOP DISCRIMINATORY DISTINCTIONS. THROUGH OUR PROJECT TO MONITOR TITLE IX, MEMBERS BUILT ALLIANCES WITH SCHOOL BOARDS AND COLLEGE ADMINISTRATIONS TO ADDRESS CULTURAL BARRIERS WHICH STILL EXIST AND THAT DISCOURAGE GIRLS AND WOMEN FROM FULL PARTICIPATION. TITLE IX HAS BEEN A FEDERAL LAW WHICH WORKED, THROUGH ITS CLEAR SIGNAL TO EDUCATION SYSTEMS OF EVERY SIZE AND TYPE THAT DISCRIMINATION WAS UNACCEPTABLE.

IT IS PRECISELY BECAUSE TITLE IX HAS WORKED AND BECAUSE WE HAVE SEEN AT GRASSROOTS LEVEL THE INCH-BY-INCH PROGRESS BUILT ON OTHER

CIVIL RIGHTS STATUTES THAT WE FIND THE CURRENT SITUATION UNACCEPTABLE. AFTER MORE THAN A DECADE OF UNEQUIVOCAL OPPOSITION TO DISCRIMINATION, THE U.S. GOVERNMENT HAS BEGUN TO WAFFLE. WE KNOW THAT LOSS OF FAITH IN THE FEDERAL GOVERNMENT'S ENFORCEMENT EFFORTS HAS LED MANY STATES, INCLUDING MY OWN WISCONSIN, TO INTRODUCE THEIR OWN CIVIL RIGHTS LAWS TO STOP THE GAP. WE ALSO KNOW HOW THE GROVE CITY DECISION AND THE CONSOLIDATED RAIL DECISION HAVE AFFECTED REAL LIVES IN REAL INSTITUTIONS, IN REAL COMMUNITIES YOU REPRESENT.

OUR WORST FEARS HAVE PROVEN TRUE. THE DEPARTMENT OF EDUCATION HAS CLOSED, LIMITED, OR SUSPENDED 63 CASES IN JUST ONE YEAR SINCE GROVE CITY. A CASE-BY-CASE REVIEW SHOWS THE DEPARTMENT'S FAILURE TO ACT DESPITE THEIR OWN FINDINGS OF DISCRIMINATION.

THIS REFUSAL TO ACT RESPONSIBLY ON BEHALF OF OUR DAUGHTERS, AND OUR DISABLED AND MINORITY COMMUNITY MEMBERS, IN CASES WHERE DISCRIMINATION HAS BEEN PROVEN TO EXIST IS UNCONSCIONABLE. FURTHER REVIEW OF THESE CASES ALSO DEMONSTRATES SEVERE INCONSISTENCY IN THE DEPARTMENT'S DECISION TO ENFORCE. SOME CASES HAVE BEEN SUSPENDED PENDING A FORMAL GOVERNMENT INTERPRETATION OF TITLE IX ENFORCEMENT UNDER GROVE CITY. OTHER CASES HAVE BEEN CLOSED COMPLETELY.

SO STRONGLY DID AAUW OBJECT TO THIS TREATMENT, THAT THE ASSOCIATION HAS BROUGHT SUIT AGAINST THE DEPARTMENT OF EDUCATION FOR WHAT WE BELIEVE TO BE ARBITRARY ACTION AND INCORRECT INTERPRETATION

OF THE GROVE CITY RULING. THAT CASE, AAUW, ET AL v. DEPARTMENT OF EDUCATION, ET AL IS NOW PENDING BEFORE THE U.S. DISTRICT COURT OF THE DISTRICT OF COLUMBIA.

AS TAXPAYERS, AAUW MEMBERS ARE ALSO COMMITTED TO OVERTURNING THE "PROGRAM-SPECIFIC" INTERPRETATION OF TITLE IX IN THE GROVE CITY CASE. THIS INTERPRETATION IS ALREADY CREATING A BUREAUCRACTIC NIGHTMARE FOR EDUCATION INSTITUTIONS, CORPORATIONS AND THE FEDERAL GOVERNMENT. REMEMBER, THAT THE INTERPRETATIONS WE OPERATED ON FOR 10 YEARS WERE SIMPLE: IF YOU GET FEDERAL FUNDS YOU DON'T DISCRIMINATE. THAT'S THAT. IT'S NOT THAT WE ALL ACCEPTED THAT MANDATE, BUT WE UNDERSTOOD IT. THE PROCESS NOW REQUIRED TO TRACK AND PINPOINT FEDERAL FUNDS TO SPECIFIC PROGRAMS TAKES TIME, PAPERWORK, PERSON POWER AND MONEY. MANY INSTITUTIONS WON'T DO IT BECAUSE THEY'VE DISCOVERED IT IS NOT GOOD OPERATION TO DISCRIMINATE. BUT WHERE THE HABIT OF EQUITY IS NOT YET LEARNED, TORTUOUS NEW PROCESSES ARE BEING CREATED AS RATIONALIZATION NOT TO ACT.

FOR EXAMPLE, A NORTHEASTERN UNIVERSITY (BOSTON, MASSACHUSETTS) STUDENT FILED A TITLE IX COMPLAINT. SHE SAID THE UNIVERSITY FAILED TO TAKE ACTION TO REDRESS A SEXUAL HARASSMENT COMPLAINT AND HAD NO GRIEVANCE PROCEDURE, AS REQUIRED BY TITLE IX. PRIOR TO THE GROVE CITY COLLEGE DECISION, THE DEPARTMENT OF EDUCATION OFFICE OF CIVIL RIGHTS HAD ONLY TO DETERMINE THAT THE UNIVERSITY RECEIVED FEDERAL FUNDS. NOW OCR MUST FIND WHETHER FEDERAL FUNDS GO TO THE PROGRAM IN WHICH DISCRIMINATION IS CHARGED. IN THIS

CASE, IT WAS THE ECONOMICS DEPARTMENT LOCATED IN LAKE HALL--A CLASSROOM BUILDING. NORTHEASTERN HAD RECEIVED $2 MILLION FROM THE COLLEGE HOUSING LOAN PROGRAM, AS WELL AS $9.9 MILLION IN STUDENT AID FOR 1983-84.

BUT OCR DECIDED THAT IT COULD NOT INVESTIGATE THE COMPLAINT BECAUSE LAKE HALL, WHERE THE ALLEGED DISCRIMINATION OCCURRED, WAS NOT BUILT OR RENOVATED WITH FEDERAL LOANS. IRONICALLY, IF THE ALLEGED SEXUAL HARASSMENT HAD OCCURRED IN STUDENT DORMS WHICH WERE RENOVATED WITH FEDERAL LOANS, THE COMPLAINT WOULD HAVE BEEN INVESTIGATED. THIS CASE IS ON "POLICY HOLD" AT THE EDUCATION DEPARTMENT. (OCR #01-84-2020).

IN A TIME OF LIMITED FEDERAL RESOURCES, A TIME OF PUBLIC OPPOSITION TO EXCESSIVE FEDERAL SPENDING, A TIME WHERE THE DEFICIT OVERSHADOWS ALL CONGRESSIONAL DEBATE, WE ASK: WHO WILL FUND THIS NEW GOVERNMENT BUREAUCRACY? WHAT IS THE GROVE CITY DECISION COSTING AMERICAS TAXPAYERS? WE BELIEVE TAXPAYERS ARE NOT ONLY BEING ASKED TO SUBSIDIZE DISCRIMINATION, BUT WE ARE ALSO BEING ASKED TO FUND COSTLY AND UNNECESSARY RED TAPE AS WELL.

AAUW BELIEVES IT WAS NEITHER THE INTENT NOR SPIRIT OF OUR CIVIL RIGHTS LAWS ENACTED BY THE U.S. CONGRESS TO ENCOURAGE COSTLY SUBTERFUGE TO CAMOFLAUGE DISCRIMINATION BY INSTITUTIONS RECEIVING FEDERAL FUNDS. IN FACT, HISTORY TELLS US THAT LAWS WERE CREATED TO PROHIBIT SUBSIDY OF DISCRIMINATION AND TO ENCOURAGE THOSE RECEIVING FEDERAL FUNDS TO SERVE AS MODELS TO SHOW THAT EQUITY WORKS. TWENTY YEARS OF ENFORCEMENT DEMONSTRATE HOW AND WHY THESE STATUTES NEED TO BE ENFORCED.

WE URGE YOUR FAVORABLE AND SWIFT CONSIDERATION OF THIS CRITICAL LEGISLATION.

THANK YOU.

Do I understand that Ms. Louise Crooks also is in this same situation? Ms. Crooks?

Ms. Crooks. Almost in that same situation, not quite as pressing.

The Chairman. Well, would you have time to remain for some questions?

Ms. Crooks. Yes.

The Chairman. With the understanding that when the time comes, that if you have to leave, we understand.

Ms. Crooks. I shall.

The Chairman. OK. Let us call on you next: then we will take each in order unless there is someone else in a similar situation?

[No response.]

Ms. Crooks.

Ms. Crooks. Thank you, Mr. Chairman.

My name is Louise Crooks, and I am the vice president of the American Association of Retired Persons.

We have a national membership of 18 million persons age 50 and older.

We appreciate the opportunity to support H.R. 700.

I shall summarize my testimony for you, but I ask that the entirety of my written remarks be entered into the record, please.

Age discrimination is a pernicious, many-faceted problem. It affects the very survival of an individual in every aspect of his or her life.

All kinds of services, from health to housing to transportation to education, are at issue.

AARP has supported the Age Discrimination Act of 1975 since its inception. Modeled after title VI of the Civil Rights Act of 1964, the ADA provides that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

As with title VI, title IX of the Education Amendments of 1972 and section 504 of the Rehabilitation Act of 1973, all dramatically affect our heterogeneous membership.

Congress indeed, we believe, intended the broadest possible coverage of these. The *Grove City* decision has already substantially narrowed the scope of title IX and it will narrow the coverage of the ADA and the other two affected statutes by allowing a Federal grant recipient to discriminate in all or any of its operations without fear of Government or private legal recourse, except in the program that actually receives the Federal funds.

The Civil Rights Restoration Act seeks to restore the original intent of the ADA by making clear that the coverage of the Federal civil rights laws extends to the entire agency or institution receiving Federal funds, whether it is state or local government, university, or system of higher education, corporation, or private organization, or any other entity.

The ADA requires nondiscrimination in the practices and services, excluding employment, provided by more than 7,000 hospitals, 18,000 nursing homes, and by thousands of community mental health and day care centers, adoption agencies, welfare agencies, and other social service providers.

Additionally, the ADA applies broadly to other federally funded areas, such as education, transportation and housing.

As we face continued reductions in Federal dollars to these various entities, services will likely be curtailed.

The broadest interpretation of the ADA and the other civil rights statutes is necessary in order to protect people from being underserved solely based on their age, race, sex or handicap.

We cannot tolerate situations where a hospital receiving Federal grants is allowed to deny emergency room service to the aged in favor of younger patients when medical personnel and supplies are scarce, simply because the emergency room is not a direct recipient of Federal assistance.

We cannot tolerate situations where persons over the age of 55 might be denied immunization by a city clinic providing such services only to the working age population.

Such discrimination would be permitted even though the city received Federal funds for health services unless the funds were traceable to this particular service.

We cannot tolerate situations where a university with a college of medicine or law could deny admission to qualified white men over a certain age on the grounds that an older person will have fewer years to practice.

We cannot tolerate situations where a State rehabilitation service could give low priority to persons above a certain age or refuse to train persons above a certain age on the grounds that they are harder to employ or less likely to benefit from job training.

We cannot tolerate situations where public mass transit systems operate buses whose steps are too high for the mobility impaired, and these people are often elderly, or whose subways lack elevators or escalators likewise ban such persons.

AARP stands against discrimination of any sort and certainly that with such sweeping ramifications to its members.

It is due to the potential for discrimination cited that AARP opposes S. 272, the Civil Rights Amendments Act of 1985. The bill specifically deals only with education. It does not ban discrimination by recipients of Federal assistance in many other areas. For example, health, social services, transportation, and housing. And I think this was brought out by the previous panel.

S. 272 in no way precludes the Supreme Court from reaching the very same restrictive result it reached in *Grove City*. And even with respect to education, the bill does not clearly restore the broad coverage that existed prior to *Grove City* decision.

Age discrimination undermines basic constitutional and statutory guarantees of equality and basic social safeguards promoting individual worth.

Moreover, ageism is like racism and sexism, segregates on the basis of a characteristic which the individual has neither chosen nor has power to change. We simply cannot change our age.

Age distinctions can be vehicles for insensitive and ultimately invidious stereotyping.

It would be an ironic twist if we were to condone such discrimination with the very dollars contributed in large part by those against whom we are discriminating.

It is for this reason that we endorse H.R. 700, the Civil Rights Restoration Act, and we urge its speedy enactment.

Thank you.

[The prepared statement of Louise Crooks follows.]

Prepared Statement of Louise Crooks

Thank you, Mr. Chairmen. My name is Louise Crooks and I am Vice President of the American Association of Retired Persons (AAPP), a national membership organization of 18 million persons age 50 and older. AARP appreciates the opportunity to state for the Committee and Subcommittee its support for H.R. 700, the Civil Rights Restoration Act of 1985.

AARP's support for H.R. 700 stems from its commitment to prohibitions against age discrimination. Equally important, however, is an acknowledgement of AARP's heterogeneous membership -- a membership that requires the protection of all four of the basic civil rights statutes: Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. We are concerned that the effectiveness of these four critical civil rights statutes has been thrown into doubt by the recent Supreme Court decision in Grove City College v. Bell. It is urgently necessary that we reaffirm the broad and comprehensive coverage that has always been provided by these statutes. Discrimination has no place among recipients of federal funds.

Billions of dollars in federal financial assistance are annually distributed to state and local governments and a variety of nongovernmental entities. Congress has, therefore, rightfully imposed conditions on the receipt and use of this federal financial assistance. Among these, statutory prohibitions against discrimination stand as the benchmark of our democratic system: federal dollars must not support discrimination of any kind.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, WHICH PROHIBITS DISCRIMINATION ON THE BASIS OF RACE, COLOR, AND NATIONAL ORIGIN, WAS THE FIRST SUCH MAJOR NONDISCRIMINATION STATUTE LIMITING FUNDING RECIPIENTS. PRESIDENT JOHN F. KENNEDY WAS ELOQUENT:

> "SIMPLE JUSTICE REQUIRES THAT PUBLIC FUNDS, TO WHICH ALL TAXPAYERS OF ALL RACES CONTRIBUTE, NOT BE SPENT IN ANY FASHION WHICH ENCOURAGES, ENTRENCHES, SUBSIDIZES OR RESULTS IN RACIAL DISCRIMINATION. . ."

THE AGE DISCRIMINATION ACT OF 1975 (ADA), AS AMENDED, SUPPORTED BY AARP AT THE TIME OF ITS INCEPTION, IS THE PRIMARY STATUTORY VEHICLE DEVISED BY THE CONGRESS TO ADDRESS DIRECTLY THE PROBLEM OF AGE DISCRIMINATION PERPETRATED BY RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE. THIS LAW PROVIDES THAT:

> NO PERSON IN THE UNITED STATES SHALL, ON THE BASIS OF AGE, BE EXCLUDED FROM PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER, ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE.

ALTHOUGH THE ADA IS AN AMENDMENT TO THE OLDER AMERICANS ACT OF 1975, IT DOES NOT HAVE THE SAME AGE LIMITATION -- THE ADA IS DESIGNED TO PROTECT PERSONS OF ALL AGES FROM DISCRIMINATION BASED UPON AGE.

IT IS CLEAR THAT CONGRESS MODELED THE ADA AFTER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964. ADA'S GENERAL PROHIBITION ON DISCRIMINATION TRACKS TITLE VI; MOREOVER, THE LEGISLATIVE HISTORY MAKES CLEAR THAT CONGRESS WAS LOOKING TO TITLE VI IN FASHIONING THE AGE STATUTE.

THE ADA'S LEGISLATIVE HISTORY REVEALS AMBITIOUS GOALS. THE LAW CALLED FOR THE UNITED STATES COMMISSION ON CIVIL RIGHTS TO CONDUCT A STUDY OF FEDERALLY ASSISTED PROGRAMS TO DETERMINE THE EXISTENCE, NATURE AND SCOPE OF AGE DISCRIMINATION. THE COMMISSION

CONCLUDED THAT "DISCRIMINATION ON THE BASIS OF AGE" IS WIDESPREAD AND THAT PERSONS AGED 65 AND OVER WERE "CONSISTENTLY ADVERSELY AFFECTED" BY IT. THE COMMISSION'S FINDINGS LED TO AMENDMENTS STRENGTHENING THE ADA IN 1978.

ALTHOUGH THERE ARE THOSE WHO POINT TO THE ADA'S EXEMPTIONS AND CONCLUDE THAT IT IS FLAWED AS A VEHICLE FOR PROHIBITING AGE DISCRIMINATION, SUCH REASONING ONLY SERVES TO REINFORCE OUR MESSAGE HERE TODAY: THE ADA IS IMPORTANT AND MUST NOT BE NARROWED FURTHER. CONGRESS HAS APPROPRIATELY DIFFERENTIATED BETWEEN UNACCEPTABLE AGE DISCRIMINATION AND ACCEPTABLE AGE DIFFERENTIATIONS; AGE DISCRIMINATION SHOULD THUS BE SUBJECT TO THE BROADEST COVERAGE.

THE GROVE CITY DECISION HAS ALREADY SUBSTANTIALLY NARROWED THE SCOPE OF TITLE IX AND WILL NARROW THE COVERAGE OF THE ADA AND THE OTHER TWO AFFECTED STATUTES BY ALLOWING A FEDERAL GRANT RECIPIENT TO DISCRIMINATE IN ALL OR ANY OF ITS OPERATIONS --WITHOUT FEAR OF GOVERNMENT OR PRIVATE LEGAL RECOURSE -- EXCEPT IN THE PROGRAM THAT ACTUALLY RECEIVES THE FEDERAL FUNDS. THE CIVIL RIGHTS RESTORATION ACT SEEKS TO RESTORE THE ORIGINAL INTENT OF THE ADA BY MAKING CLEAR THAT THE COVERAGE OF THE FEDERAL CIVIL RIGHTS LAWS EXTENDS TO THE ENTIRE AGENCY OR INSTITUTION RECEIVING FEDERAL FUNDS -- WHETHER IT BE A STATE OR LOCAL GOVERNMENT AGENCY, UNIVERSITY OR SYSTEM OF HIGHER EDUCATION, CORPORATION OR PRIVATE ORGANIZATION, OR ANY OTHER ENTITY.

THE ADA REQUIRES NONDISCRIMINATION IN THE PRACTICES (EXCLUDING EMPLOYMENT, COVERED BY THE AGE DISCRIMINATION IN EMPLOYMENT ACT) AND SERVICES PROVIDED BY MORE THAN 7,000 HOSPITALS, 18,000 NURSING HOMES, AND BY THOUSANDS OF COMMUNITY MENTAL HEALTH AND DAY CARE CENTERS, ADOPTION AGENCIES, WELFARE AGENCIES

AND OTHER SOCIAL SERVICE PROVIDERS. ADDITIONALLY, THE ADA APPLIES BROADLY TO OTHER FEDERALLY FUNDED AREAS SUCH AS EDUCATION, TRANSPORTATION AND HOUSING.

AS WE FACE CONTINUED REDUCTIONS IN FEDERAL DOLLARS TO THESE VARIOUS ENTITIES, SERVICES WILL LIKELY BE CURTAILED. THE BROADEST INTERPRETATION OF THE ADA AND THE OTHER CIVIL RIGHTS STATUTES IS NECESSARY IN ORDER TO PROTECT PEOPLE FROM BEING UNDERSERVED SOLELY BASED ON THEIR AGE, RACE, SEX OR HANDICAP.

- WE CANNOT TOLERATE SITUATIONS WHERE A HOSPITAL RECEIVING FEDERAL GRANTS IS ALLOWED TO DENY EMERGENCY ROOM SERVICE TO THE AGED, IN FAVOR OF YOUNGER PATIENTS, WHEN MEDICAL PERSONNEL AND SUPPLIES ARE SCARCE -- SIMPLY BECAUSE THE EMERGENCY ROOM IS NOT A DIRECT RECIPIENT OF FEDERAL ASSISTANCE.
- WE CANNOT TOLERATE SITUATIONS WHERE PERSONS OVER THE AGE OF 55 MAY BE DENIED IMMUNIZATION BY A CITY CLINIC PROVIDING SUCH SERVICES ONLY TO THE WORKING-AGE POPULATION. SUCH DISCRIMINATION WOULD BE PERMITTED EVEN THOUGH THE CITY RECEIVED FEDERAL FUNDS FOR HEALTH SERVICES, UNLESS THE FUNDS WERE TRACEABLE TO THIS PARTICULAR SERVICE.
- WE CANNOT TOLERATE SITUATIONS WHERE A UNIVERSITY WITH A COLLEGE OF MEDICINE OR LAW COULD DENY ADMISSION TO QUALIFIED WHITE MEN OVER A CERTAIN AGE ON THE GROUNDS THAT AN OLDER PERSON WILL HAVE FEWER YEARS TO PRACTICE THE PROFESSION.
- WE CANNOT TOLERATE SITUATIONS WHERE A STATE REHABILITATION SERVICE COULD GIVE LOW PRIORITY TO PERSONS ABOVE A CERTAIN AGE OR REFUSE TO TRAIN PERSONS ABOVE A CERTAIN AGE, ON THE GROUNDS THAT THEY ARE HARDER TO EMPLOY OR LESS LIKELY TO BENEFIT FROM JOB TRAINING.

- We cannot tolerate situations where public mass transit systems operate buses whose steps are too high for the mobility impaired -- who are often elderly -- to mount, and subways whose lack of elevators or escalators likewise ban their use by such persons.

AARP stands against discrimination of any sort -- and certainly that with such sweeping ramifications to its members.

It is due to the potential for discrimination cited above that AARP opposes S.272, the Civil Rights Amendments Act of 1985. The bill deals specifically only with education. It does not ban discrimination by recipients of federal assistance in many other areas -- for example, health, social services, transportation, housing. S.272 in no way precludes the Supreme Court from reaching the very same restrictive result it reached in Grove City. And even with respect to education, the bill does not clearly restore the broad coverage that existed prior to the Grove City decision.

Age discrimination undermines basic constitutional and statutory guarantees of equality and basic social safeguards promoting individual worth. Moreover, ageism, like racism and sexism, segregates on the basis of a characteristic which the individual has neither chosen nor has power to change. Age distinctions can be vehicles for insensitive and ultimately invidious stereotyping. It would be an ironic twist if we were to condone such discrimination with the very dollars contributed, in large part, by those against whom we are discriminating. It is for this reason that AARP endorses H.R. 700, the Civil Rights Restoration Act, and urges its speedy enactment.

The CHAIRMAN. Thank you, Ms. Crooks.

The next witness, Ms. Marilyn Rose of the Jacksonville Area Legal Aid. Ms. Rose.

Ms. ROSE. Thank you, Mr. Chairman, for the invitation to testify today.

Since October 1983 when I left this fair city and moved to the Sun Belt, I have been with Jacksonville Area Legal Aid.

My testimony, however, is not confined to my limited experience in northeast Florida, but it reflects my experience over 20 years working to represent minorities, the poor, the elderly, and the handicapped in obtaining access to health services.

In 1966 through 1969 I was a civil rights lawyer with the Federal Government. From 1969 through 1981 I was with a public interest law firm representing poor people in such litigation around the country. I was 2 years in private practice and did continue to do civil rights work. And I am now back with legal services but now as a resident of the Deep South.

It is said that a page of history is worth a volume of logic. From both history and logic, there is considerable reason to support H.R. 700.

In 1966 and 1967 I was the health civil rights attorney for HEW and was heavily involved in the desegregation of the southern hospitals.

We used Medicare, which became effective on July 1, 1966, to assist in that desegregation. At that time the blatant separate but equal, or the so-called separate but equal system still existed in most of the hospitals in the South, and ironically most of those hospitals were built with Federal moneys under the Hill-Burton Act, which had a separate but equal clause in it.

Hospitals were either all white, a few were all black, and those were very inferior hospitals, or they had separate wings or floors. And in 1966 and 1967 I saw those facilities built with Federal money.

Had we given in the 1960's the interpretation to program our activity which the Supreme Court gave in *Grove City* under title IX, hospitals desiring to retain that pattern of segregation could have elected to have separate Medicare wings and limited admission of blacks to those Medicare wings.

Today, the vast portion, if not really virtually all, of the Federal assistance given to hospitals, the hospital industry, is Medicare and Medicaid.

Hospitals or nursing homes which desire to limit access to minorities could under the *Grove City* interpretation refuse to treat any minorities except those in Federal programs, and then limit the internal placement to a separate Medicare and Medicaid wing.

And to answer the concerns of some of the Members of Congress who ask about, well, would they just elect to go out of the Medicare and Medicaid programs, the vast portion of them would accept the institutionwide interpretation which they have always accepted, and they accepted in 1966 because approximately 35 or 40 percent of the moneys they get are reimbursement for Medicare and Medicaid patients.

There are some institutions, a small number of them, who may serve the very wealthy who don't need those programs, or may serve largely people who are only covered by private insurance and they can elect not to participate.

But those are the institutions with which we are concerned still to attempt desegregation or integration in the delivery of services.

While in most places the blatant legally sanctioned segregation of the past is behind us, the consequences of past discrimination still persist.

The narrow definition in *Grove City* would render some of those matters unreachable by title VI, and those are some of the places—and I believe Bill Taylor referred to the fact—many of these hospitals and nursing homes are private institutions.

It is only through the fact that they get Federal financial assistance that discrimination within them is reached.

Let me give you a few examples of my concern today as is reflected in the realities of the health system today.

First, access into mainstream hospital care is largely through private physicians. Low-income minority patients, including those who are covered by Medicaid and Medicare, which makes them paying patients, in disproportionate number lack private physicians.

If the minority patient obtains access to these mainstream hospitals, he or she must do so through the emergency room.

One major change in the hospital industry has been the compartmentalization of the hospital entity, including the emergency service.

In great number, hospitals have contracted out the emergency service to a private group that uses its emergency room but still is a private group.

If the group operating the emergency service operates that service in such a way as to discriminate against minorities, whether overtly or by effect, that discrimination might not be attributable to the hospital itself under the narrow program-specific definition in *Grove City*.

The discriminating program would not be the hospital, no matter how large a portion of its receipts were paid from Federal funds.

A second example. In recent years there has been a growing number of chain operations in the health care industry. That phenomenon has been especially prevalent in the Southeast.

In any particular area, the chains may own or operate multiple facilities, each of which is organized as a separate entity.

The nursing home industry is particularly organized in that manner. But hospitals are not immune to such ownership structure or management.

Under a program-specific definition, such as given by the Supreme Court in *Grove City*, one facility may effectively be the white institution and the other the minority institution. But the overall economic relationship of these institutions are—they are interrelated, but they are beyond the title VI purview.

And I can visualize, for instance, in a county like Palm Beach County, FL, where you have the very extremely wealthy in the Palm Beach area, and a nursing home chain may have a nursing home there, and they then have several other nursing homes scattered throughout the county. And the west part of Palm Beach

County is some of the poorest areas of this country, where there are large numbers of migrants.

I can visualize the nursing home chain wanting to take advantage of having Medicaid and Medicare reimbursement of its nursing homes in the western part of Palm Beach County, but having this fancy, all private and all white institution in the eastern part of Palm Beach County. And that is possible.

But under the program-specific definition of the Supreme Court in *Grove City,* that white institution in the eastern part of the county would not be reachable even though the economics of the entire operation of two or three or four institutions, at separate facilities, are really one entity.

The latter problem is also not limited to the chain operation. In the last 15 years, as white populations left the cities and moved to the new suburbs, those left behind were low-income populations which were and are heavily minority and elderly, populations that need health care in larger proportion and number than the mainstream white middle-class population.

Initially, many of these hospitals created their own dual system. They would leave a facility behind which became the inner-city hospital and then build a new fancy hospital with a fancier service in the suburbs.

Both facilities must be reviewed together to determine whether, in fact, there is a title VI violation involved.

If the program-specific definition advanced by the Supreme Court in *Grove City* is not legislatively reversed, there is a great danger that the two entities would not be viewed in tandem, and that by simple structural devices they could be viewed as separate programs, and the discrimination in the one economic unit, which is the overall institution, of the parent corporation would not be looked at or could not be reached.

Title VI and its progeny, section 504, the Age Discrimination Act, and title IX were intended to remove the taint and shame of discrimination from Federal moneys which belong to all people in the United States.

That was the intention of Congress in 1964. An institutional recipient, whether a governmental department or a private entity, does not operate hundreds of separate programs or activities. Hospitals don't operate a Medicare program and a Blue Cross program. They delivery health services to everyone within one institution.

Such Federal funds permit an institution to direct more of its non-Federal funds to those other parts that don't get the separate part. You just can't view an institution separately the way the *Grove City* decision of the Supreme Court does. That was understood by Congress in 1964.

It is reflected in the regulations of every governmental department, regulations which were contemporaneously promulgated in an administration which worked with that Congress toward the original enactment.

In 1984, that context and that purpose was lost in the *Grove City* decision. It should be reinstated. It is a restoration.

Thank you.

[The prepared statement of Marilyn G. Rose follows:]

PREPARED STATEMENT OF MARILYN G. ROSE

I would like to thank you for the opportunity to testify today in support of passage of H.R. 700. My name is Marilyn Rose. Since October 1983 I have been on the staff of Jacksonville Area Legal Aid, which serves poor people in a four county, mixed urban and rural area of Northeast Florida. I am, however, speaking in the context of almost twenty years of experience representing minorities, the poor, the elderly, and the handicapped in obtaining nondiscriminatory access to health services. In 1966-1967 I was the health attorney for the Office of Equal Health Opportunity, the constituent agency of the old HEW, which had the responsibility to apply the then new Title VI of the Civil Rights Act of 1964 to hospitals, health agencies, and other recipients of federal financial assistance in the health area. From 1969 until early 1974 I was an attorney with the OEO-funded National Health Law Program, and developed many of the strategies which the legal service community has used to deal with problems of access for the poor and minorities into the health system. Between 1974 and 1981 I continued similar work with the foundation funded Center for Law and Social Policy. While during most that long period my base was Washington, D. C., I co-counseled cases all over the country, north, south, and west. From 1972 until 1981, I also chaired a health task force for the Leadership Conference on Civil Rights.

From an historical standpoint, H.R. 700 would restore the law to what we thought it to be in 1966, when Medicare became law, and O.E.H.O. was expanded to utilize Medicare to assist desegregating the hospital system in the South. At that time the blatant separate-but-equal system still existed in most of the hospitals in the South. Ironically, most of the hospitals in that area of the country were built with federal monies under the Hill-Burton Act, and that law had a "separate but equal" clause. Hospitals were either all white, or had separate wings or floors. Witnesses at our early hearings testified that they did not protest segregation within the hospital, even if publicly owned, because when they or their families were patients their lives may be at stake. Had we given the interpretation to "program or activity" in 1966 which the Supreme Court gave in Grove City in 1984, hospitals desiring to retain that pattern of segregation could have elected to have separate "Medicare" wings, and limited admission of Blacks to those Medicare wings. Indeed, as today probably the only federal assistance programs making payments to hospitals are Medicare and Medicaid, hospitals desiring to limit access of minorities could, under the Grove City interpretation, refuse to treat any minorities except those in those federal programs, and then limit the internal placement to a separate Medicare and Medicaid wing.

While in most places that blatant, legally-sanctioned, segregation of the past is behind us, the consequences of past discrimation still persist. The narrow definition of program or activity which arises from the Grove City decision could render some of those matters unreachable by Title VI. Let me give you a few examples which reflect my concern:

1. Access into mainstream hospital care is largely through private physicians. Low income minority patients, in disproportionate numbers, lack private physicians. If the minority patient obtains access to these mainstream hospitals, he often must do so through the emergency room. One major change in the hospital industry has been the compartmentalization of the hospital entity

including the emergency service. In great numbers hospitals have contracted out their emergency service to other entities. If the group operating the emergency service operates that service in such a way as to discriminate against minorities, whether overtly or by effect, that discrimination might not be attributable to the hospital itself under a narrow, program-specific definition. The discriminating "program" would not be the hospital, no matter how large a portion of its receipts were paid from federal funds.

2. In recent years there has been a growing number of chain operations in the health care industry. That phenomenon has been especially prevalent in the southeast. In any particular area the chains may own or operate multiple facilities, each of which is organized as a separate entity. The nursing home industry is particulary organized in that manner, but hospitals are not immune to such ownership, structure, or management. Under a program-specific defination such as given by the Supreme Court in Grove City, one facility may effectively be the white institution and the other the minority institution, and the over-all economic relationship of the two institutions may be beyond the Title VI purview.

3. The latter problem is not limited to the chain operations. In the last fifteen years, as white populations left the cities and moved to new suburbs, those left behind were low income populations which were, and are, heavily minority and elderly. Initially many of these hospitals created their own dual system, leaving one facility behind and building a more modern facility in the suburbs, often because health planning agencies would not permit all bed-stripping to occur in the cities. Both facilities must be reviewed together, to determine whether there is a Title VI violation. If the program-specific definition advanced by the Supreme Court in Grove City is not legislatively reversed, there is a great danger that the two entities would not be viewed in tandem, and that by simple

structural devices, they could be viewed as separate programs.

Title VI and its progeny (Section 504, The Age Discrimination Act, and Title IX) were intended to remove the taint and shame of discrimination from federal monies which belong to all people in the United States. An institutional recipient, whether governmental or private, does not operate as hundreds of separate programs or activities. Financial assistance to one of its parts, whether in the form of Medicare to assist the provision of health care to the elderly, or federal grants to low-interest loans to college students, go to entire institution and aid its entire program. Such federal funds permit the institution to direct more of its nonfederal funds to these other parts. That was understood by Congress in 1964. It is reflected in the regulations which were contemporaneously promulgated by an Administration which worked with that Congress toward the original enactment. In 1984 that context and purpose was lost. It should be reinstated.

The CHAIRMAN. Well, thank you.

The next witness is Mr. Howard Phillips, chairman of the Conservative Caucus.

Mr. Phillips, I recall we had a common experience in one of the earlier experiments, the Office of Economic Opportunity; we worked together, although with different viewpoints. It is a personal pleasure to welcome you back in a different role.

Mr. PHILLIPS. Mr. Chairman, it is a pleasure for me to appear before you again. I do recall with affection and high regard your hospitality and your gracious leadership, even though there were matters on which we had points of philosophical difference.

And I am grateful to the committee for giving me this opportunity to appear.

My name is Howard Phillips. I am chairman of the Conservative Caucus, a nonpartisan, grassroots, civic association with more than 700,000 supporters throughout the United States.

It is our belief that the legislation under consideration poses a threat to the religious liberty of every denominationally premised institution, to the academic freedom of every college and university, to the civil liberty of each American, as well as to the diversity and pluralism so prized in our society.

This is the case because H.R. 700 arises from the premise that every American citizen, every family, every business, every church and synagogue, every school, hospital and enterprise must conform to the procedures, policies and values promulgated by those who speak in the name of the Federal Government.

If H.R. 700 were enacted, our citizens would even more become the servants of Government rather than its masters.

The doctrine of unlimited Federal sovereignty implicit in H.R. 700 is a prescription for tyranny rooted in the same despotic premises by which, throughout history, monarchs, oligarchs and totalitarians have sought to impose their authority and control over entities which were created without their help and in whose activities there is no rightful place for their meddlesome intervention.

We are endowed by our Creator with certain inalienable rights, America's founders declared. They knew that Government is not the source of our liberty, but when properly constituted its guardian.

It is beyond the Federal Government's legitimate authority to direct our lives. Its task, instead, is to protect us at all times from aggressors, domestic and foreign, and to impose penalties when we transgress the God-given rights of others.

Though self-consciously labeled, the Civil Rights Restoration Act of 1985, H.R. 700, does not restore but reduces our rights by vastly increasing governmental authority.

In *Grove City College, et al.* v. *Bell, Secretary of Education, et al.*, a Supreme Court majority unwisely concluded, in conformance with recommendations of Education Department officials in both the Carter and Reagan administrations, that a private Presbyterian college which had never discriminated by declaration, indeed, of the Court itself, and which had never accepted 1 cent of Federal money should be made subject to the Government's claim of sovereignty over it so long as even one student at Grove City benefitted from taxpayer subsidized basic educational opportunity grants.

Not satisfied with even this judicial extential of feudal authority over a highly esteemed academic institution, Congress has sought, whole camouflaging in a gallatarian rhetoric it attempted imperial power grab, to extend its assertion of control institutionwide, going well beyond the Court's view that Federal oversight ought be limited to the financial aid unit, an office which merely processed for the benefit of the students those Government grants which now seem to have some very long strings attached.

H.R. 700 would not merely enshrine the claim that association with beneficiaries of Federal aid is tantamount to direct acceptance of such aid, it would also broadly extend the reach of Federal bureaucratic and judicial interventionism to all of the operations of State and local government agencies, university systems, local education agencies, corporations, partnerships and other private organizations, and to any other entity any part of which is extended Federal financial assistance.

Concern about this proposal is widespread, with reservations having been expressed by entities so diverse as the National Association of Evangelicals, the American Farm Bureau Federation, the New Republic Magazine, and the U.S. Catholic Conference.

Questions have been raised regarding the implications its passage would have on small farms, parochial school systems, hospitals and physicians, the private housing industry, and even the family itself.

For example, would the logic of the proposal make all nonprofit groups with tax exempt status subject to additional Federal oversight and control?

More specifically, would tuition tax credits under the logic of H.R. 700 become a trojan horse of increasing Government authority over private education?

As Professor Diane Ravitch of Columbia observed in the New Republic for December 3, 1984, "Opponents of tuition tax credits denigrate choice as an undemocratic value, as a value inconsistent with equality."

Once private schools are subject to the same regulations as public schools, will they lose the qualities that make them special?

Nonpublic schools benefit by their tax exempt status. This, I believe, is the real spectre of tuition tax credits, not the destruction of the public schools, but the absorption of private schools into the public sector.

Tax credits seem likely to stimulate much greater Government regulation of student admissions, teacher certification, curriculum standards, and disciplinary practices.

Professor Ravitch continues:

> Tuition tax credits have gained support in recent years because of the expectation that they will not unleash higher levels of government regulation since the financial benefits will go to parents rather than to institutions. But the validity of this argument may have been undermined by the Supreme Court's Grove City College Decision that federal loans to the college's students represented aid to the college itself, even though the college scrupulously refused any direct loans, grants or contracts from the federal government. Based on this precedent.

Concludes Diane Ravitch:

> Federal and state courts might eventually decide that tuition tax credits, no less than student loans, benefit the institutions and make them recipients of public as-

> sistance. If this occurs, there might even come a time when the courts determine that the schools receiving these public benefits must banish religion from their curriculum.

Or, she might have added, require the employment of homosexuals or the provision of abortion as a matter of mandatory adherence to established public policy.

Or perhaps the worm might turn, with those of a different view on public policy grounds barring homosexuals from campus or requiring, for example, compulsory military service.

If H.R. 700 were law, all solutions would be federalized. Diversity and private choice would be prohibited. Predominantly black colleges could be prohibited or promoted. But in general, it is not the Federal Government's proper task to prohibit or promote any particular tampering with our freedom of association.

It is especially unseemly for Congress to seek imposition of its will in this manner on the pluralistic society it was elected to serve, particularly when Congress has exempted itself from so much of its own prescriptive legislation.

According to Congressional Quarterly for January 19, 1985, Congress has either made itself exempt from or given itself special status under the Civil Rights Act of 1964, the National Labor Relations Act, the Equal Pay Act, the Fair Labor Standards Act, the Age Discrimination in Employment Act, the Occupational Safety and Health Act, the Freedom of Information Act, the Privacy Act, the Civil Service Reform Act of 1974, and, of course, in 1977 Congress exempted itself from payment of State and local taxes in Maryland.

Perhaps if the political doctors in this body were administered a dose of the regulatory castor oil which some of you at least want to prescribe for the rest of us, you would come to agree that such potions often have a poisonous, rather than a palliative effect.

I urge you to reject H.R. 700 and to resist the temptations of increasing your political power over the lives of those who have entrusted you to safeguard their liberties.

Thank you very much.

[The prepared statement of Howard Phillips follows:]

PREPARED STATEMENT OF HOWARD PHILLIPS

Mr. Chairman. Members of the Committee:

My name is Howard Phillips. I am Chairman of The Conservative Caucus, a non-partisan, grass roots civic association, with more than 700,000 supporters throughout the United States.

The legislation under consideration poses a threat to the religious liberty of every denominationally-premised institution, to the academic freedom of every college and university, to the civil liberty of each American, as well as to the diversity and pluralism so prized in our society.

This is the case because H.R. 700 arises from the premise that every American citizen, every family, every business, every church and synagogue, every school, hospital, and enterprise must conform to the procedures, policies, and values promulgated by those who speak in the name of the Federal government. If H.R. 700 were enacted, our citizens would even more become the servants of government, rather than its masters.

The doctrine of unlimited Federal sovereignty implicit in H.R. 700 is a prescription for tyranny, rooted in the same despotic premises by which, throughout history, monarchs, oligarchs, and totalitarians have sought to impose their authority and control over entities which were created without their help and in whose activities there is no rightful place for their meddlesome intervention.

"We are endowed by our Creator with certain inalienable rights", America's founders declared. They knew that government is not the source of our liberty, but, when properly constituted, its guardian. It is beyond the Federal government's legitimate authority to direct our lives. Its task, instead, is to protect us at all times from aggressors, domestic and foreign, and to impose penalties when we transgress the God-given rights of others.

Though self-consciously labeled "the Civil Rights Restoration Act of 1985", H.R. 700, does not restore, but reduces our rights, by vastly increasing governmental authority.

In Grove City College et al. v. Bell, Secretary of Education, et al., a Supreme Court majority unwisely concluded---in conformance with recommendations of Education Department officials in both the Carter and Reagan Administrations that a private Presbyterian college---which had never discriminated and which had never accepted one cent of Federal money---should be made subject to the government's claim of sovereignty over it, so long as even one student enrolled at Grove City benefited from taxpayer-subsidized Basic Educational Opportunity Grants.

Not satisfied with even this judicial extension of feudal authority over a highly esteemed academic institution, Congress has sought, while camouflaging in egalitarian rhetoric its attempted imperial power-grab, to extend its assertion of control institution-wide, going well beyond the Court's view that Federal oversight ought be limited to the financial aid unit---an office which merely processed, for the benefit of the students, those government grants---which now seem to have some very long strings attached.

H.R. 700 would not merely enshrine the claim that association with beneficiaries of Federal aid is tantamount to direct acceptance of such aid. It would also broadly extend the reach of Federal bureaucratic and judicial interventionism to "all of the operations" of state and local government agencies, university systems, local education agencies, corporations, partnerships, and "other private organizations" and to "any other entity...any part of which is extended Federal financial assistance."

Concern about this proposal is widespread, with reservations having been expressed by entities so diverse as the National Association of Evangelicals, the American Farm Bureau Federation, the New Republic magazine, and the U.S. Catholic Conference.

Questions have been raised regarding the implications its passage would have on small farms, parochial school systems, hospitals and physicians, the private housing industry, and even the family itself.

For example, would the logic of the proposal make all non-profit groups with tax exempt status subject to additional Federal oversight and control?

More specifically, would tuition tax credits, under the logic of H.R. 700, become a "Trojan horse" for increasing government authority over private education?

As Professor Diane Ravitch observed in the New Republic for December 3, 1984: "Opponents of tuition tax credits denigrate choice as an undemocratic value, as a value inconsistent with equality...Once [private schools] are subject to the same regulations as public schools, will they lose the qualities that make them special?...Nonpublic schools benefit by their tax exempt status...This, I believe, is the real specter of tuition tax credits: not the destruction of the public schools, but the absorption of private schools into the public sector. Tax credits seem likely to stimulate much greater government regulation of student admissions, teacher certification, curriculum standards, and disciplinary practises."

Professor Ravitch continues: "Tuition tax credits have gained support in recent years because of the expectation that they will not unleash higher levels of government regulation, since the financial benefits will go to parents rather than to institutions. But the validity of this argument may have been undermined by the Supreme Court's Grove City College decision...that federal loans to the college's students represented aid to the college itself, even though the college scrupulously refused any direct loans, grants or contracts from the federal government."

"Based on this precedent", concludes Diane Ravitch, "federal and state courts might eventually decide that tuition tax credits---no less than student loans---benefit the institutions and make them recipients of public assistance. If this occurs, there might even come a time when the courts determine that the schools receiving these public benefits must banish religion from their curriculum"---or, she might have added, require the employment of homosexuals, or the provision of abortion, as a matter of mandatory adherence to established public policy.

Or, perhaps, the worm might turn, with those of a different view, on public policy grounds, barring homosexuals from campus, or requiring compulsory military service. If H.R. 700 were law, all solutions would be Federalized. Diversity and private choice would be prohibited. Predominantly Black colleges could be prohibited---or promoted. But, in general, it is not the Federal government's proper task to prohibit or promote any particular tampering with our freedom of association.

It is especially unseemly for Congress to seek imposition of its will in this manner on the pluralistic society it was elected to serve---particularly when Congress has exempted itself from so much of its own prescriptive legislation. According to Congressional Quarterly for January 19, 1985, Congress has either made itself exempt from or given itself special status under (a) the Civil Rights Act of 1964, (b) the National Labor Relations Act, (c) the Equal Pay Act, (d) the Fair Labor Standards Act, (e) the Age Discrimination in Employment Act, (f) the Occupational Safety and Health Act, (g) the Freedom of Information Act, (h) the Privacy Act, (i) the Civil Service Reform Act of 1974, and (j) of course, in 1977, Congress exempted itself from payment of state and local taxes in Maryland.

Perhaps, if the political doctors in this body were administered a dose of the regulatory castor oil which you want to prescribe for the rest of us, you would come to agree that such potions often have a poisonous, rather than a palliative effect.

I urge you to reject H.R. 700 and resist the temptations of increasing your political power over the lives of those who have entrusted you to safeguard their liberties.

The CHAIRMAN. We thank you, Mr. Phillips.

The next witness is Mr. Jack Powell, Paralyzed Veterans of America.

Mr. DIGEORGE. Mr. Chairman, my name is Frank R. DiGeorge, associate legislative director of the Paralyzed Veterans of America, and I am representing Mr. R. Jack Powell, who could not be here today due to mitigating circumstances.

Mr. Chairman and members of the committee, we certainly want to thank you for holding these hearings today, but we also must state our complete displeasure with the fact that these hearings even have to be held due to the fact that we think the *Grove City* decision misinterpreted the original intent of Congress related to civil rights laws that have already and previously been enacted.

I am going to submit at this time our complete statement for the record and just briefly refer to it.

But referring to the previous panel, there are some points that I would like to allude to and address more specifically.

In institutions that receive Federal funds, it seems to us, the Paralyzed Veterans of America, that no matter where those funds go that if the institution receives those funds that they are liable and by the law forced to not discriminate in any program.

Be that as it may, some institutions that receive certain funds may not think that they are discriminating when in fact and indeed we believe they are.

Affirmative action, in reference to the mom and pop stores that were questioned earlier, affirmative action plans by the Department of Labor refer to what needs to be done with mom and pop stores.

Namely; No. 1, if they don't employ over 15 employees they are not liable to the Federal laws. But, in addition, if they don't receive over $2,500 they are not in need to address any affirmative action plans.

But beyond that, one point that I wish to make real quickly is that the entrepreneurs in the mom and pop stores are not in receipt of Federal funds. It is the person that is cashing in their food stamps that is in receipt of Federal dollars, and the entrepreneur receives not $1 in the effort to cash in the food stamps.

So, this point seems to always be overlooked, and we wish to make that point at this time.

Regarding H.R. 700, PVA, the Paralyzed Veterans of America, is in strong support of passage of this bill, and because of the *Grove City* decision we feel at this present time there is no law that protects the disabled from discrimination at this time.

That is unfortunate, that our country has found itself in this position, and you, Mr. Chairman, and this committee have that responsibility to try to reenact these laws as quickly and as expeditiously as possible.

We know that you will do a good job in looking at the needs of disabled and other minorities. But in the process, while there is no law—and you will find contained in our statement that the law, no matter how effective it is, that over 20 years have gone by since the Civil Rights Act itself has been passed and that law and all laws subsequent that deal with civil rights have not been fully implemented nor enforced to its maximum potential.

PVA is, on this basis, within the last year responding to 504 regulations issued by the Department of HHS, Health and Human Services, has responded 25 times in opposition to the rules that have been posed for comment.

What I am pointing to and addressing here is that on one hand we don't have a law and on the other hand we don't have the proper enforcement and followup procedures of the law. That has caused PVA not only to object in 25 situations to the comments, but also has caused us to go into the courts taking action against the Department of Health and Human Services for the process in which they have presented their 504 regulations.

If you will allow me, I will just briefly refer to this.

In the process of taking court actions, on three occasions we have, with other organizations or individually, pursued suits in the courts regarding the Civil Aeronautics Board's regulations, whereas we have been held in favor and the courts have ruled against the Civil Aeronautics Board for their interpretation of writing what they consider as the definition of Federal financial assistance. And I refer you to that for that specific reason. I believe it needs to be looked at because it does have something to do with this legislation as it is being pursued presently.

I will not get into depth. It is a long court case. But we would be willing to meet with your staff further, should you decide to discuss it further.

Regarding the 504 regulations that we are pursuing with the Department of Health and Human Services—I am looking for a definition here—here we go—PVA has been successful in compelling all the Federal agencies, including the Postal Service, to promulgate regulations implementing section 504's nondiscrimination provision in their own programs and activities.

But, however, because of the narrow interpretation provided by the Supreme Court decision in *Grove City,* has been the reason why we have had to pursue these cases further.

Let me finalize my statement by saying that the paralyzed—I will refer you to the 504 statement regarding the pursuit of the HHS in our testimony. I can't locate it at the present time. Rather than take your time, I will refer you to that in our statement.

But I would say in summation that the Paralyzed Veterans of America have served this country, as most veterans have, for the purpose of what we believe was defending our rights and our laws.

The laws have taken a long time to come by and to be legislated, and it has taken lots of pain and lots of effort, and PVA strongly believes that no one should have to endure 1 day of discrimination for any reason, any minority, any person, any group, any class.

Therefore, I repeat that we are in strong support of H.R. 700 and hope and urge, strongly urge the Congress to pass H.R. 700 in the First Session of the 99th Congress, so that we can end discriminatory practices that might be subsidized by the Federal Government at this time.

Thank you.

[The prepared statement of R. Jack Powell follows:]

PREPARED STATEMENT OF R. JACK POWELL

Mr. Chairmen, Members of the House Committee on Education and Labor, and Members of the Civil and Constitutional Rights Subcommittee of the House Committee on the Judiciary, I am R. Jack Powell, Executive Director of Paralyzed Veterans of America. On behalf of the members of PVA, it is a privilege to appear before you today, to present our concerns and to support passage of the "Civil Rights Restoration Act of 1985," H.R. 700 and S. 431. These measures restore broad institution-wide coverage of four civil rights laws: Title IX of the 1972 Education Amendments, Section 504 of the 1973

Rehabilitation Act, the 1975 Age Discrimination Act, and Title VI of the 1964 Civil Rights Act. Each statute prohibits discrimination in programs receiving federal financial assistance.

First, I would like to express our appreciation to the Chairmen of these Committees for introducing H.R. 700, Senator Kennedy for introducing the Senate version, S. 431, the 171 bipartisan House cosponsors and the 46 bipartisan Senate cosponsors of the measures. I would also commend each of you and your staff members for the time, talent, support and energy you have all brought to bear on this important issue. By conducting these hearings and the already accomplished regional field hearings in Philadelphia, Atlanta, Chicago, Los Angeles, and Santa Fe, your efforts to bring national attention and focus on the issue are especially noteworthy.

For the record, I would like to briefly explain the nature of Paralyzed Veterans of America. Since its founding in 1947, PVA has been in the forefront in organizing and ensuring quality health care and rehabilitation and in providing specialized assistance for veterans with spinal cord injury or dysfunction. In addition, PVA strives to assist all handicapped individuals through a broad range of programs designed to provide fuller access to society.

Prior to the mid 1940's, few individuals survived a spinal cord injury. However, with the introduction of antibiotics during World War II, and subsequent medical advances, the life expectancy of an individual with a spinal cord injury, today, is nearly the same as the average life span for the population at large. With survival and increased longevity has come the need to learn how to cope with, and find solutions to, the many problems associated with spinal cord injuries and dysfunctions.

Today, PVA -- chartered by Congress in 1971 to meet the special needs of the thousands of veterans who are paralyzed as a result of spinal cord injury or dysfunction -- is a nationally based organization with over 11,000 members, with more than 40 Chapters and Subchapters, and more than 50 national service offices located within the Veterans Administration system.

PVA's membership is small, primarily because of our membership requirements: all our members are veterans who have experienced spinal cord injury or dysfunction, which has resulted in varying degrees of paralysis. Comprised almost equally of service and nonservice-connected disabled veterans, our membership resides in all fifty states, in the District of Columbia, Puerto Rico, and Mexico.

Probably the most common attribute distinguishing PVA from many other veterans' service organizations is our need and desire to monitor and champion the cause of the "catastrophically' disabled veteran. And, for this reason, PVA has, during its 38 year history, developed a special understanding of the veteran population, and the wide variety of programs administered by the Veterans Administration.

Within PVA's national program structure, we have four areas of major emphasis. As earlier mentioned, we have an active Service Program dedicated to serving all veterans, PVA members and nonmembers alike. In addition, PVA has a Legislative Program designed to monitor the activities of both Congress and the Administration. We also have an Advocacy Program, which works closely with state and federal agencies, to ensure that laws dealing with the rights of disabled citizens are properly implemented and upheld.

Last, but certainly not least, we have a Research Program of which we are especially proud. Each year PVA's Research Program, through its Spinal Cord Research Foundation (SCRF), provides over one-half million dollars to fund promising research in the field of spinal cord injury and health related areas. Monies to support the SCRF program are raised and contributed by PVA. Since its inception in 1976, PVA's Research Foundation alone has expended over three million dollars in research monies, not counting the monies contributed to fund research projects by individual PVA Chapters. Through this single program, PVA has become the nation's largest private funding source for spinal cord injury research, an accomplishment of which we are extremely proud.

Pertinent to our testimony, I have expressed our appreciation; now I must, emphatically, state our displeasure with the fact that these ongoing hearings must be conducted. In our view, the Nation, Congress, and the people, in their own way, have pursued curtailment of the many forms of discrimination through legislation previously enacted into law. It has taken time, tremendous effort, and caused great sorrow only to nearly achieve what many were beginning to believe was within their grasp. But you know, and we know, that discrimination has not ended, and that it will not be terminated under its own volition. In review, we only need to examine the record, by simply looking back one year, to clearly see that Congress through the efforts of a few individuals failed to pass the "Civil Rights Act of 1984." This failure creates a situation whereby our government is, openly and blatantly, repeating history by subsidizing discrimination. This is intolerable and must be rectified as quickly as possible.

This is one reason why we, as a nation, we, who are discriminated against, need the laws that would protect most of us. When discrimination occurs, we can only imagine and/or empathize with those who have been discriminated against as a class of people or as an individual. And then, once discrimination has been experienced, it is too late. This experience is more than any one person should have to endure.

The passage of the "Civil Rights Restoration Act of 1985" is important to our heterogeneous organization, because our membership encompasses the broad spectrum of race, gender, and age. PVA, since its inception, has diligently pursued and continues to pursue the removal of "attitudinal" and architectural barriers that prohibit social acceptance and involvement of the disabled person. Passage would ensure equal opportunity in employment, housing, transportation, recreation and education through programs conducted by the federal government.

Mr. Chairmen, in our presentation today, please note that we strongly believe it is of importance to provide you with an examination of some prior activities or inactivities surrounding the administering of the enacted civil rights laws, rather than a case-by-case illustration of individual discriminating practices. As a result of the poorly administered laws, it is also important to provide a brief portrayal of those court actions PVA has initiated and/or supports, while pursuing our civil rights. These efforts reflect our dissatisfaction with the performance of those agencies who persist or refuse to respond to their responsibility to properly implement and enforce existing law(s).

Over the years, PVA has sought passage of legislation in various areas, which was intended to improve or assist in the quality of life of disabled persons. Consequently, we have seen success in this area; in fact, in 1984, the 98th Congress passed legislation that provides vocational training and employment assistance to veterans to enable them to reenter the work force. This measure included in the "Veterans' Benefits Improvement Act of 1984," Public Law 98-543, removes damaging work disincentives somewhat more far reaching, but similar to the Social Security trial work period for unemployed, severely disabled individuals.

Unfortunately, on the other hand, the same Congress did not pass the civil rights measure, which would reinforce the effort for individuals to pursue further education with the purpose of becoming more self reliant, and participating members in the community. The failure to pass the "Civil Rights Act of 1984" seriously weakened the confidence of those who need the support to become involved without restrictions of their efforts to pursue their maximum potential.

PVA maintains a firm, supportive posture that H.R. 700, as you intended, Mr. Chairmen, does not expand existing laws, but simply restores all civil rights laws to pre-Grove City. Both the Civil Rights Acts of 1984 and the Civil Rights Restoration Act of 1985 are designed to overcome the damaging effects of the one year old Supreme Court decision, (February 28, 1984), Grove City College v Bell, which undermines much of the prohibition against sex discrimination in any "program or activity receiving federal financial assistance."

This interpretation literally does not recognize the original intent of Congress, but dramatically narrows the provisions of the enacted civil rights laws - the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. It appears that every time there is a newly elected Administration the laws are to be changed, and, in certain instances, where the implementation of the law has not been fully promulgated and enforced, you can understand how distressing this can be. However, be assured that PVA's purposes will not allow us to succumb, nor will we be deterred from our pursuits to seek implementation of the law.

Again, let us look at the historical, administrative approaches surrounding the law. President Gerald R. Ford issued Executive Order 11914, April 28, 1976, "Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs," which provides for consistent implementation within the Federal Government of Section 504 of the Rehabilitation Act of 1973. The Grove City Supreme Court decision, supported by the present Administration, changed that order.

It is evident that by itself the Presidential Executive Order was not sufficient to alter discrimination practices toward disabled persons in federal programs. It was not until January 3, 1978, under extreme pressure from the disabled community, that the Honorable Joseph A. Califano, Jr., then

Secretary of Health, Education and Welfare, signed the agency rule to implement Executive Order 11914. Unfortunately, this was not the end. Because even today, many federal agencies have not yet finalized, or even begun to implement, their 504 regulations. For too long, there has been too much foot dragging, and now there are those who are fearful that H.R. 700 provides too much coverage, and they want to change the law, a law that has yet to be implemented to its maximum potential. And, because of such absurdities, PVA has been forced to enter into court actions for resolution of matters of interpretation. As an example, in 1984 PVA submitted in excess of 25 comments to the federal agencies, outlining our objections to their proposed rules. As stated, a lawsuit has been filed by PVA against the Department of Justice, challenging their final Section 504 Rule.

Our past experiences dictate that we must disagree with the opponents of the "Civil Rights Restoration Act of 1985," and their incorrect assumptions. In June 1982, the Civil Aeronautics Board posed a final rule implementing Section 504 of the Rehabilitation Act and Section 404, nondiscrimination section of the Federal Aviation Act. In November of that same year the CAB issued supplemental provisions to change several sections in the rule that were found to be objectionable. Nonetheless, it fell short of meeting the nondiscrimination provision of Section 504, and it was objected to by PVA, and on January 14, 1983, we joined other disability rights organizations in a petition before the U.S. Court of Appeals for the District of Columbia to review the CAB's final §504 regulations issued on June 16, 1982. In its brief, PVA challenged three main provisions of the final rule, which it believed violated §504. These points of contention were, 1) CAB's narrow definition of federal financial assistance; 2) restrictive definition of qualified handicapped person; and 3) advance notice requirement of up to 48 hours for the provision of "extensive special assistance," which included boarding equipment and aisle chairs.

On January 18, 1985, the U.S. Court of Appeals for the District of Columbia Circuit Court agreed with the Paralyzed Veterans of America and held that the Section 504 nondiscrimination provision applies to all commercial carriers, rather than just those receiving direct federal subsidies. It opined that the disabled tax treatment received by the airlines in the service provided by the Federal Aviation Administration's National Air Traffic Control System constitutes federal financial assistance under Section 504. The court rejected CAB's argument that Section 504 be extended to the threshold of planes themselves and not beyond. It referred to an area precedent regarding the CAB's civil rights regulators as well as its long standing administrative interpretation and their conclusion that airports and airlines are inextricably intertwined.

PVA, along with other interested handicapped persons, filed another lawsuit on April 22, 1982, against the U.S. Postal Service, Rose v. U.S.P.S., to enforce a congressional mandate that ensures architectural barriers to handicapped persons are eliminated in buildings operated and leased by the U.S.P.S. On February 16, 1984, a three judge panel sitting on the Ninth Circuit Court of Appeals unanimously reversed a lower court decision, which held that the Postal Service had no duty to provide handicapped access to leased buildings under the "Architectural Barriers Act" and Sections 501 and 504 of the Rehabilitation Act of 1973, as amended. The dispute concerned two provisions in the Act, which the parties each contended was the controlling provision for determining the government's duty to make alterations in leased buildings for handicapped access. In resolving the dispute, the Appeals Court looked to the legislative history of the Act and its amendments.

In addition, PVA is involved in another lawsuit which impacts upon the U.S. Postal Service. In Williams v. U.S.A.; U.S. Postal Service, PVA has been successful in compelling all federal agencies, including the U.S. Postal Service, to promulgate regulations implementing Section 504's nondiscrimination provision in their own programs and activities. However, as of this date, the U.S. Postal Service has not published that proposed rule for comment. Therefore, you can see that PVA is aware of the adverse ramifications of a narrow interpretation that could be made either by agencies or the Supreme Court.

PVA has been involved in many other legislative activities in efforts to improve opportunities for disabled Americans. Included in these efforts are passage of the Architectural Barriers Act of 1968, the Rehabilitation Act of 1973, and the Voting Accessibility for the Elderly and Handicapped Act of 1984. Additionally, PVA has been a member of the American National Standards Institute (ANSI) since its formation in 1959. The purpose of ANSI is to formulate minimum physical accessibility standards for elderly and handicapped persons in public buildings. All these efforts may be diminished if the "Civil Rights Restoration Act of 1985" does not become law.

No American should be expected to tolerate one additional day of discrimination, as PVA calls upon Congress to listen to the collective voice of 200 organizations and to act now on the "Civil Rights Restoration Act of

1985." While the measure has received overwhelming bipartisan support from members in both the Senate and the House, it is indeed unfortunate that a few are willing to delay this important legislation which would restore civil rights to all Americans. We are all together on this issue, and we shall not be divided. We, the so-called 'minorities,' will not rest until our civil rights are restored.

Ironically, Congress passed Senate Joint Resolution 388 and the President signed it into Public Law 98-394 on August 21, 1984. This law congratulated America's athletes for their performances in the 1984 Winter and Summer Olympic Games. Many of these athletes are the very people who have benefited from these antidiscrimination programs that are now jeopardized. Racial minorities, women, and disabled individuals have all demonstrated their abilities since discrimination has been prohibited. Without financial assistance in sports, education, and other programs; and without the necessary protection of law, minorities are subject to discrimination which preclude many from fully participating in society. Passage of this legislation is necessary if all citizens are to achieve their fullest potential, whatever their endeavors.

I would also like to point out that in unity the women's groups, since the Grove City v. Bell Supreme Court decision, have supported the efforts of other minorities in their efforts to seek passage of the encompassing "Civil Rights Restoration Act of 1985," H.R. 700 and S. 431. PVA wishes to take this opportunity to publicly recognize the efforts of these women's organizations, by extending our appreciation to them. They could have accepted legislation that would restore their rights in education programs, but instead they realized that women are included in the ranks of the aged, minorities, and disabled communities, and, further, that all civil rights need to be protected whether in education, housing, employment, and other programs that include day-to-day living experiences.

The Paralyzed Veterans of America joins in the women's efforts and that of the Leadership Conference on Civil Rights and 200 other concerned organizations who demand the restoration of our civil rights. PVA believes that equal opportunity without enforcement of the law is not equal opportunity. We wonder if America can allow discrimination to continue to flourish and truly enjoy patriotism.

In summation, the record reflects that the laws have been enacted in support of the Constitution to protect citizens from discriminatory practices - to begin, the "Civil Rights Act of 1871," the "Civil Rights Act of 1964," the "Architectural Barriers Act of 1968" (Public Law 90-430), the "Rehabilitation Act of 1973" (Public Law 93-112), the "Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1975." The laws plus Presidential Executive Orders, Policy Rules (agencies) and Court Actions are all efforts that clearly address issues of discrimination. And yet, the potential remains to sweep aside these guaranteed rights.

I would like to remind Congress that over 20 years have elapsed since the passage of the "Civil Rights Act of 1964," and during the intervening years other laws have passed. Yet, America has not achieved its goal to protect all of its citizens from discriminatory practices. Compliance with the laws has been consistently slowed down through the continuing tactics of delay and reissuance of directives and/or federal regulations. This in itself has created constant misinterpretation of the laws.

Most veterans served in the Nation's military to defend the rights contained in the Constitution, and the laws of the land. PVA, and its veteran membership, has demonstrated, since its formation, a desire to terminate public and governmental discriminatory practices in programs receiving federal financial assistance. PVA urges the passage of H.R. 700 in the first session of the 99th Congress. Civil rights reinforce more than equal opportunity; they offer a balanced sense of well-being and the ability to participate in our society. With passage of H.R. 700, every citizen can truly acknowledge America's promise - Liberty and Justice for All!

Mr. Chairmen, in conclusion, thank you for this opportunity to present PVA's concerns on this serious matter. I will be happy to answer any questions that I can.

The CHAIRMAN. Thank you.

The next witness is Mr. Larry Gold, general counsel of the AFL-CIO.

Mr. GOLD. Thank you, Mr. Chairman. I will try to be more conservative with the committee's time than some of my colleagues, and I would ask that my entire statement be printed in the record.

The CHAIRMAN. Without objection, that statement and the other statements of the witnesses will be printed in the record at this point.

[The prepared statement of Larry Gold follows:]

PREPARED STATEMENT OF LAWRENCE GOLD

Mr. Chairman, my name is Laurence Gold; I appear on behalf of the American Federation of Labor and Congress of Industrial Organizations of which I am General Counsel. We are very pleased to have this opportunity to support wholeheartedly H.R. 700, and we urge its passage by these committees and by the whole House of Representatives at the earliest possible date.

I do not believe that it would be a sensible use of these committees' time to elaborate on either the need for legislation or the virtues of H.R. 700. Both have already been made abundantly clear. The need was created by an unfortunate Supreme Court decision, one which truncated the reach of Title IX and which, at the least, put into doubt the continuing broad coverage of the three civil rights statutes that share with Title IX the operative phrase "program or activity"; and that decision was followed by the Reagan Administration's statement of intent to apply that narrowing decision broadly. All of that, as well as the contours of pre-Grove City coverage as the statutes were administered over the decades preceding President Reagan's election, was examined and elaborated last year. Since the need thus established is for a restoration of the four affected statutes to their pre-Grove City status, and there is one bill before you which would achieve that end, it follows that H.R. 700 should be enacted.

What is more worthwhile is a look at why the alternative bill that has been offered in the other body does not solve the problem created by the Grove City decision. The Senate bill offered by Senator Dole with the support of the Administration, is too narrow in its restoration of pre-Grove City coverage to educational institutions only. The Dole/Administration bill, moreover, while purporting not to affect the anti-discrimination obligations of recipients of federal financial assistance other than educational institutions, creates the danger that Congress will be taken as approving this Administration's constricted coverage concept. Let me say a little more on each of these points.

Neither Senator Dole, in introducing his bill, nor then-Assistant Attorney General for Civil Rights William Bradford Reynolds in testimony here has defended the Grove City reading of "program or activity". Both readily agree that as to educational institutions the result the Court reached works an unjustifiable limitation on the recipient's obligation not to discriminate on the basis of sex, race, handicap or age. But, inexplicably, these gentlemen would draw the corrective line at the "educational institution". No principled basis is readily apparent for a distinction between educational "institutions", on the one hand, and the myriad other recipients of federal financial assistance, such as health care systems and institutions on the other. For what reason ought receipt of federal money by the former require non-discrimination across-the-board on the recipient's part but receipt of indistinguishable federal funds by the latter have a more limited effect on the recipient? Neither Mr. Reynolds nor Senator Dole has been able, in proffering an answer to that eminently reasonable question, to suggest a rational basis for the distinction they would draw.

The Senator's public explanation at the time he introduced his bill -- "I can pass [this] legislation" -- has the sole virtue of candor.

Judging from his testimony, Mr. Reynolds' justification for the distinction he endorses, is the repeated assertion that congressional action reaching beyond Title

IX is congressional action reaching beyond Grove City. That, of course, ignores his own official interpretation of, and reaction, to the decision at the time, in his capacity as federal law enforcer. Suffice it for present purposes to point out that few on any side of this question agree with the proposition that the Court's reading in Grove City of "program and activity" affects Title IX and that Title only. The Reynolds testimony offers as its only reason why remedial legislation should be limited to educational institutions a reading of the Constitution that ignores the Civil War Amendments, not to mention actions of the legislative and executive branches and rulings by the Court over the last three decades: "H.R. 700...rais[es] fundamental issues about the proper reach of the Federal Government in our federalist system of limited government...on the other side of the debate are those of us who continue to believe that the role of the Federal Goverment under our Constitution is a limited one...that...should not be allowed to trample upon legitimate claims to independence and pluralism in the private sector...."

To begin with, much public sector discrimination would be "legitimate" under this novel constitutional learning as well as private sector discrimination supported with federal tax dollars and thus hardly "independent". But the more complete answer to the highfalutin federalist language is the patently sensible answer of Congressman Fish, speaking in the tradition of the administration of Abraham Lincoln rather than of this Administration: "If you choose to receive Federal financial aid, you must comply with the anti-discrimination requirements of all four of these laws." This does appear to us, as Mr. Fish asserted, "a logical and fair result."

For the overriding point is that the Federal Government is not now in, and should not enter the business of subsidizing discrimination. That is a principle this country has painfully established in the years since World War II. No oratory about "legitimate" claims to independence and no paean to pluralism can obscure that what Mr. Reynolds advocates as the position of our Government is precisely a willingness to tolerate federally-supported discrimination, by federal recipients other than an educational institution.

This leads to an examination of just how passage of the Dole bill would affect federally-funded "programs and activities" outside "educational institutions"? This is the second aspect of the bill to which I referred earlier. As I have emphasized, the language interpreted in Grove City is the same language found in each of the other three statutes, none of which is limited (as is Title IX) to the realm of education. As to these areas, the Dole/Administration bill is said by its sponsor to have no impact. But its actual significance may well be otherwise. In its own words, apart from its effect with respect to educational institutions, that bill is not to be construed "to expand or narrow the meaning of the phrase 'program or activity'", which pharase should be construed "without reference to or consideration of" the Grove City or North Haven decisions of the Court.

With all respect, we do not see how this formula of words is sufficient to blind the Court to the obvious. Nothing in the Dole/Administration bill would invalidate the analysis that led to the Grove City rationale. And we have too much respect for the acumen of the bill's sponsors to believe that they do not realize that putting the same train on the same track may result in ending up at the same destination. It is patent too that the Dole/Administration does not require the Court to ignore Congress' response to the Grove City decision. If that response consists in a reversal only of the narrow result, together with a studied refusal to take issue with the reasoning or its logical implication for the other similarly-worded laws, the opportunity is created for the argument to the courts that what Congress did and did not do reenforces a narrow reading of "program or activity" except where the recipient of federal funds is an educational institution.

In conclusion, Mr. Chairman, the AFL-CIO believes that the Congress in 1985 cannot do better -- and ought do no less -- than reiterate its commitment to the purpose and scope of these four civil rights laws as that purpose was stated by President Kennedy, with reference to Title VI, the model for all the others: "Simple justice requires that public funds to which all taxpayers of all races contribute, not be spent in any fashion which encourages, subsidizes or results in racial discrimination."

Mr. GOLD. Thank you. The AFL-CIO is pleased to have this opportunity to support wholeheartedly H.R. 700 and to urge its passage at the earliest possible date.

I do not believe it would be a sensible use of these committees' time to elaborate yet again on either the need for legislation or the virtues of H.R. 700. Both have already been made abundantly clear.

Rather, I wish to spend a few minutes of the committee's time looking at why the alternative bill that has been offered in the other body does not solve the problem created by the *Grove City* decision.

Neither Senator Dole in introducing that bill nor then-Assistant Attorney General for Civil Rights William Bradford Reynolds in testimony here has defended the *Grove City* reading of "program or activity". Both readily agree that as to educational institutions the result the Court reached works an unjustifiable limitation on the recipient's obligation not to discriminate on the basis of sex, race, handicap, or age.

But inexplicably these gentlemen would draw the corrective line at the educational institution. No principled basis is readily apparent for a distinction between educational institutions on the one hand and the myriad of other recipients of Federal financial assistance, such as health care institutions, on the other.

For what reason ought receipt of Federal money by the former require nondiscrimination across-the-board on the recipient's part, but receipt of indistinguishable Federal funds by the latter have a more limited effect on the recipient?

Neither Mr. Reynolds nor Senator Dole has been able, in proffering an answer to that eminently reasonable question, to suggest a rational basis for the distinction they would draw.

The Senator's public explanation at the time he introduced his bill, "I can pass this legislation," has the solve virtue of candor.

Mr. Reynolds' testimony offers as the only reason why remedial legislation should be limited to educational institutions that "The role of the Federal Government under our Constitution is a limited one that should not be allowed to trample upon legitimate claims to independence and pluralism in the private sector."

To begin with, much public sector discrimination would be legitimate under this novel constitutional learning, as well as much private sector discrimination supported with Federal tax dollars, and thus hardly independent.

Beyond that is the patently sensible answer of Congressman Fish, "If you choose to receive Federal financial aid, you must comply with the antidiscrimination requirements of all four of these laws." That does appear to us, as Mr. Fish asserted, "a logical and fair result."

This leads to an examination of just how passage of the Dole bill would affect federally funded programs and activities outside educational institutions. As I have emphasized the language interpreted in *Grove City* is the same language found in each of the other three statutes, none of which, as is title VII, is limited to the realm of education. As to these areas, the Dole/administration bill is said by its sponsor to have no impact.

But its actual significance may well be otherwise. Nothing in the Dole/administration bill would invalidate the analysis that led to the *Grove City* rationale. And the common sense of the matter is that putting the same train on the same track may well result in ending up at the same destination.

It is patent, too, that the Dole/administration bill does not require the Court to ignore Congress' response to the *Grove City* decision. If that response consists in a reversal only of the narrow result, together with a studied refusal to take issue with the reasoning or its logical implications for the other similarly worded laws, the opportunity is created for the argument to the courts that what Congress did and did not do reenforces a narrow reading of "program or activity" except where the recipient of Federal funds is an educational institution.

For these reasons and the other reasons that have been already stated by various supporters of H.R. 700, we urge its enactment.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

The CHAIRMAN. The final witness is Ms. Brownie Leadbetter of Little Rock, AR. Ms. Leadbetter, you're recognized.

Ms. LEADBETTER. Thank you, sir. Thank you for this opportunity. I believe that the *Grove City* decision represents an isolated, but I am afraid prevalent perspective that loses sight of American diversity. But I am not a lawyer, so I will leave the discussion of those finer legal points to those who are.

I am speaking as an activist and a lobbyist for various human rights groups over the last 25 years in my home State of Arkansas. And in that role I have had to learn why the perspective of some people is different from mine and why there is so much defensiveness about this issue of discrimination, a defensiveness that is being played out, tragically I believe, in national policy at this time in our history.

I think it has to do with our experience. We have not had enough firsthand exposure to the incredible diversity in our own country. It takes a long time for whole groups of people to trust each other. And just when they began to learn how, we have people in power in this Nation who seem hellbent on dismantling the legal structure that we need to continue this process.

Twenty years is not very long. It's only within the lifetime of my children. We need a lot more time to work this out, this experiment with diversity. I don't believe they are out-and-out racists in the halls of leadership in this country. I don't think we need that to perpetuate discrimination because it's been so institutionalized.

But I do believe that for the most part there are people who have no experience with discrimination in leadership, discrimination based on race, or age, or disability, or gender. And since discrimination is not a part of their experience, they tend to believe that it doesn't exist. And I think that's understandable. If I had not had different perspectives forced upon me during the 1950's and the 1960's in my hometown of Little Rock during a racial crisis at Little Rock Central High, and even more particularly if I had not run up against a good many stereotypes because of my gender, my perspective would surely be more like the perspectives of many white males in leadership positions today. There is no question.

And when I discipline myself, I can acknowledge that. You have problems in your life, you face up to them, you work hard to overcome them. Maybe you get in a firm because a friend of your father's got you in, but you still have to work hard to prove yourself. And if you don't, you fail. If you succeed, you earned that success and so should everyone else. No question.

If you don't succeed, it would probably be for some personal reason from that perspective, like you weren't smart enough, or you didn't work hard enough, just lazy. And I think those reasons apply to everybody. Nobody denies that.

The problem comes when some believe that those are the only barriers that anybody faces. If you add discriminatory practices to the list, you are looking at a very tough uphill road. My premise is that you've got a shot at it if you get some help overcoming the barriers you cannot remove by yourself, those artificially imposed barriers that have nothing to do with individual ability.

Those are barriers that lower people's expectations about your chances. For instance, it's the classic case of the high school counselor who is impressed with your grades but will not recommend you for training for a career that few blacks are in because your chances of making it are too low. Better lower your sights, he tells you, for your own good.

We have to have safeguards to prevent that kind of thing, and we still need them and we will for a long time. We have not overcome such unnecessary restrictions upon young people in 20 short years. And another skewed perspective, in my view, is the tendency to feel that the laws cripple institutions, and that the laws and regulations should protect those inside the institutions from blame.

I am not saying that people in institutions need to be blamed. I am saying that the focus is misplaced. Instead of focusing on who gets the blame, we need to focus on whether or not there is a victim. The institution is big enough to take care of itself in most situations. And I remember a case like that in a college in my State.

There was a secondary teacher who filed a discrimination suit. And, of course, the head of the education department was named in the suit. And the reaction was, I'm afraid, very typical. Everybody at the college was outraged that such a charge should be made against Dr. Rita Jones. She surely had not meant to discriminate in any way. And if she had, it certainly was not intentional, which I don't doubt.

But nobody was concerned at all with whether or not the teacher's claim was valid, whether or not she deserved a remedy that would further her career. I believe that that is outrageous. We have to have legal safeguards to prevent such injustices. People don't change by themselves.

All I am saying is that we have to make a special effort all our lives to see beyond our own experience, especially if we are in leadership positions. It should be a welcome responsibility in a pluralistic society. Let me just say also that we are all guilty of rationalizing our failures. I understand that. All of us, in every income group and in all races, and in all ages and in both genders, but it is imperative that we don't fall into that destructive trap of assuming that women, minorities, disabled people, or seniors are using discrimination claims as an excuse to avoid responsibility, or that we are using civil rights laws as a tool for receiving special privileges. That's not fair.

Remember, once we get into the firm, we still have to prove ourselves, and that's hard work and that is fair. We need all the help we can get to accept and to work with each other, especially in these times that seem to me to be mean spirited. And if it is clear from the laws of this land that my Government will not tolerate discrimination in any form, then we've got a chance at it. Thank you.

[The prepared statement of Brownie W. Leadbetter follows:]

PREPARED STATEMENT OF BROWNIE W. LEADBETTER

I BELIEVE THAT MOST OF OUR DIFFICULTIES IN DISCRIMINATION COME FROM A LACK OF PERSPECTIVE. THAS HAS BEEN VERY DRAMATICALLY DEMONSTRATED IN THE GROVE CITY DECISION WHICH NARROWS THE HARD FOUGHT LEGAL REMEDIES WE GAINED IN THE LAST TWO DECADES TO THE POINT OF NON-EXISTENCE. THIS DECISION COMES FROM AN ISOLATED PERSPECTIVE THAT APPEARS TO ME TO LOSE SIGHT OF AMERICAN DIVERSITY. BUT I'M NOT A LAWYER SO I'LL LEAVE THE DISCUSSION OF THE FINER LEGAL POINTS TO THOSE WHO ARE.

AS AN ACTIVIST AND LOBBYIST FOR VARIOUS HUMAN RIGHTS GROUPS OVER THE LAST 25 YEARS IN MY HOME TOWN OF LITTLE ROCK, ARKANSAS, I HAD TO LEARN WHY THE PERSPECTIVE OF SOME WHITE MALES IS DIFFERENT FROM MINE, AND WHY THERE IS SO MUCH DEFENSIVENESS ABOUT THE ISSUE OF DISCRIMINATION -- A DEFENSIVENESS THAT IS BEING PLAYED OUT TRAGICALLY IN NATIONAL POLICY AT THIS TIME IN OUR HISTORY.

I THINK IT HAS TO DO WITH OUR EXPERIENCE. WE JUST HAVEN'T HAD ENOUGH FIRST HAND EXPOSURE TO THE INCREDIBLE DIVERSITY IN OUR OWN COUNTRY. IT TAKES A LONG TIME FOR WHOLE GROUPS OF PEOPLE TO TRUST EACH OTHER. JUST WHEN WE BEGIN TO LEARN HOW ----WE HAVE PEOPLE IN POWER IN THIS NATION WHO SEEM HELL-BENT TO PREVENT IT! TWENTY-FIVE YEARS IS NOT VERY LONG, EVEN IN A COUNTRY AS YOUNG AS OURS. THAT'S ONLY WITHIN THE LIFETIME OF MY CHILDREN. WE NEED A LOT MORE TIME TO WORK OUT THIS GREAT EXPERIMENT WITH DIVERSITY.

I DON'T BELIEVE THAT THERE ARE OUT AND OUT RACISTS IN THE HALLS OF LEADERSHIP, BUT I DO BELIEVE THAT FOR THE MOST PART THEY ARE PEOPLE WHO HAVE NO EXPERIENCE WITH DISCRIMINATION BASED ON RACE OR AGE OR DISABILITY OR GENDER. SINCE DISCRIMINATION IS NOT A PART OF THEIR EXPERIENCE THEY TEND TO BELIEVE THAT IT DOESN'T EXIST. THAT'S UNDERSTANDABLE. IF I HAD NOT HAD DIFFERENT PERSPECTIVES FORCED UPON ME DURING THE FIFTIES AND SIXTIES IN MY OWN TOWN AROUND THE RACIAL CRISIS AT MY OWN ALMA MATER AND, MORE PARTICULARLY, IF I HAD NOT RUN UP AGAINST A GOOD MANY STEREOTYPES BECAUSE OF MY GENDER, MY PERSPECTIVE WOULD SURELY BE MORE LIKE THE PERSPECTIVES OF MANY WHITE MALES IN LEADERSHIP POSITIONS TODAY. IF I DISCIPLINE MYSELF I CAN ACKNOWLEDGE THAT. IF YOU HAVE PROBLEMS IN YOUR LIFE, YOU FACE UP TO THEM, YOU WORK HARD TO OVERCOME THEM, YOU GET IN THE FIRM BECAUSE OF A FRIEND OF YOUR FATHER'S -- BUT YOU STILL HAVE TO WORK HARD TO PROVE YOUSELF. IF YOU DON'T, YOU FAIL. IF YOU SUCCEED, YOU EARNED THAT SUCCESS, AND SO SHOULD EVERYONE ELSE. IF YOU DON'T SUCCEED IT WOULD BE FOR SOME PERSONAL REASON LIKE YOU WEREN'T SMART ENOUGH, OR YOU DIDN'T WORK HARD ENOUGH, JUST LAZY. AND THOSE REASONS APPLY TO EVERYBODY

NOBODY DENIES THAT. THE PROBLEM COMES WHEN SOME BELIEVE THAT THOSE ARE THE ONLY BARRIERS THAT ANYBODY FACES. FOR INSTANCE, IF YOU ADD RACIALLY DISCRIMINATORY PRACTICES TO THE LIST YOU ARE LOOKING AT A VERY TOUGH UPHILL ROAD.

MY PREMISE IS THAT YOU'VE GOT A SHOT AT IT IF YOU GET SOME HELP OVERCOMING THE BARRIERS YOU CAN'T REMOVE BY YOURSELF -- THOSE ARTIFICIALLY IMPOSED BARRIERS THAT HAVE NOTHING TO DO WITH YOUR INDIVIDUAL ABILITY. THOSE ARE BARRIERS THAT LOWER PEOPLE'S EXPECTATIONS ABOUT YOUR CHANCES FOR SUCCESS.

FOR INSTANCE, THE CLASSIC CASE OF THE HIGH SCHOOL COUNSELOR WHO IS IMPRESSED WITH YOUR GRADES BUT WILL NOT RECOMMEND YOU FOR TRAINING FOR A CAREER THAT FEW BLACKS ARE IN BECAUSE YOUR CHANCES OF MAKING IT ARE TOO LOW -- BETTER LOWER YOUR SIGHTS, HE TELLS YOU, FOR YOUR OWN GOOD. WE HAVE TO HAVE SAFEGUARDS TO PREVENT THAT KIND OF THING. WE HAVE NOT OVERCOME SUCH UNNECESSARY RESTRICTIONS UPON YOUNG PEOPLE IN TWENTY FIVE SHORT YEARS, BELIEVE ME.

ANOTHER SKEWED PERSPECTIVE, IN MY VIEW, IS THE TENDENCY TO FEEL THAT THE LAWS AND REGULATIONS SHOULD PROTECT THOSE INSIDE THE INSTITUTIONS FROM BLAME. I AM NOT SAYING THAT PEOPLE IN INSTITUTIONS NEED TO BE BLAMED. I AM SAYING THAT THE FOCUS IS MISPLACED. INSTEAD OF FOCUSING ON WHO GETS THE BLAME WE NEED TO FOCUS ON WHETHER OR NOT THERE HAS BEEN A VICTIM. THE INSTITUTION IS BIG ENOUGH TO TAKE CARE OF ITSELF. I REMEMBER A CASE IN POINT AT A COLLEGE IN MY STATE. A SECONDARY TEACHER FILED A DISCRIMINATION SUIT AGAINST THE SCHOOL OF EDUCATION THERE, AND OF COURSE, THE HEAD OF THE EDUCATION DEPARTMENT WAS NAMED IN THE SUIT. THE REACTION WAS, I'M AFRAID, FAIRLY TYPICAL. EVERYBODY AT THE COLLEGE WAS OUTRAGED THAT SUCH A CHARGE COULD BE MADE AGAINST GOOD OLD RITA JONES, SHE SURELY HADN'T MEANT TO DISCRIMINATE IN ANY WAY, AND IF SHE HAD IT WAS CERTAINLY NOT INTENTIONAL. NOBODY WAS CONCERNED AT ALL WITH WHETHER OR NOT THE TEACHER'S CLAIM WAS VALID, WHETHER OR NOT SHE DESERVED A REMEDY THAT WOULD FURTHER HER CAREER. THAT IS OUTRAGEOUS. WE HAVE TO HAVE LEGAL SAFEGUARDS TO PREVENT SUCH INJUSTICES. PEOPLE DON'T CHANGE BY THEMSELVES.

ALL I'M SAYING IS THAT WE HAVE TO MAKE A SPECIAL EFFORT ALL OUR LIVES TO SEE BEYOND OUR OWN EXPERIENCE, ESPECIALLY IF WE ARE IN LEADERSHIP POSITIONS. IT SHOULD BE A WELCOME RESPONSIBILITY IN A PLURALISTIC SOCIETY.

LET ME SAY THAT WE ARE ALL GUILTY OF RATIONALIZING OUR FAILURES -- ALL OF US -- IN EVERY INCOME GROUP, ALL RACES, ALL AGES AND BOTH GENDERS. BUT IT IS IMPERATIVE THAT WE DON'T FALL INTO THAT DESTRUCTIVE TRAP OF ASSUMING THAT WOMEN, MINORITIES, DISABLED PEOPLE, OR SENIORS ARE USING DISCRIMINATION CLAIMS AS AN EXCUSE TO AVOID RESPONSIBILITY, OR THAT WE ARE USING CIVIL RIGHTS LAWS AS A TOOL FOR RECEIVING SPECIAL PRIVELEGES. THAT'S NOT FAIR. REMEMBER, ONCE WE GET INTO THE FIRM WE STILL HAVE TO PROVE OURSELVES. AND THAT'S HARD WORK. AND THAT IS FAIR.

WE NEED ALL THE HELP WE CAN GET TO ACCEPT AND WORK WITH EACH OTHER, ESPECIALLY IN THESE MEAN SPIRITED TIMES AND IF IT IS CLEAR FROM THE LAWS OF THIS LAND THAT MY GOVERNMENT WILL NOT TOLERATE DISCRIMINATION IN ANY FORM, THEN WE'VE GOT A CHANCE AT IT. THANK YOU.

Mr. **Edwards**. Well, thank you very much, Ms. Leadbetter, for very helpful testimony.

Now I recognize the gentleman from Michigan, Mr. Conyers.

Mr. **Conyers**. Thank you, Mr. Chairman. I want to express my appreciation to all the witnesses and acknowledge that some of my constituents are here tracking down what I am supposed to be doing in the Congress, from the post office, supervisors from the post office in the Detroit area. I want to welcome them to this hearing.

And I wanted to thank Ms. Leadbetter. That was a very powerful statement. It wasn't made any less powerful by a nice, quiet delivery, and I am really glad that I heard it.

For Larry Gold, general counsel, AFL–CIO, I appreciate your very careful legal examination of the counter legislation that is before us. And I appreciated Jack Powell very much, and Louise Crooks.

And now I wanted to welcome Howard Phillips.

Mr. **Phillips**. Congressman, it's good to see you.

Mr. **Conyers**. He and I have been discussing Government policy from the Nixon days in which you were the executive director of OEO.

Mr. **Phillips**. Well, there was some confusion about my precise title, Congressman, if you can recall.

Mr. **Conyers**. Well, you presided over its demise, the case that I argued.

Mr. **Phillips**. Well, it was my hope that it would be its demise.

Mr. **Conyers**. Well, you succeeded, I thought. You did much too good a job from my point of view.

Mr. **Phillips**. Not good enough from mine, sir.

Mr. **Conyers**. Well, we're not here to talk about that today. Your little lesson comes in the field of civil rights. Now, first of all, this is a Federal body so H.R. 700 is a Federal law. So when you say if H.R. 700 were law, all solutions would be federalized. The solutions to which H.R. 700 would be federalized. *Grove City* is a Federal case. This is a Federal body. We pass Federal laws.

Now, all solutions wouldn't be federalized. So I'm not quite sure what you mean by that. But when you say diversity and private choice would be prohibited, predominantly black colleges could be prohibited or promoted, I have to enter into some discussion with you on that point.

Black colleges came into existence, as I read our history, because blacks couldn't get into any universities. Howard University created many land grant colleges. Now, H.R. 700 would in no way affect black colleges, and certainly not detrimentally. We have had a number of presidents of black universities testify to that in case any of us weren't sure about it. And I would like to refer you to their testimony, and I would like you to explain how you imagine that they might be adversely affected.

Mr. **Phillips**. Congressman, thank you very much. It's my view that rights of private association, when Federal dollars are not involved, ought not be restricted by the Federal Government. I believe that if institutions wish to organize themselves around a cultural premise or a religious premise, on the basis of single sex, or even on the basis of single race, whether or not I might agree or disagree personally, I think they have the right to do so.

My concern is that the ambiguities in H.R. 700, when combined with the principle established in *Grove City College* v. *Bell*, holds open the possibility for a vast extension of Federal authority.

If you look at the *Grove City College* case, Grove City College had never been accused specifically of discriminating. It was accused of being unwilling to fill out the form that the Federal Government submitted because it did not want to make itself subject to further Federal compliance requirements. But it was not accused of discriminating, yet it was in a position where it had to spend some $400,000 to protect its privacy, to protect its insulation from Federal regulation, and it was in a situation where the burden of proof fell on it.

My concern is that once you play too fast and loose with the concept of public policy criteria, as applied to the use of Federal funds, it can go beyond the mere limits that are intended by most of the authors of this legislation and get into many other areas as well.

Mr. CONYERS. Well, now, let's set aside *Grove City College* for a moment.

Mr. PHILLIPS. I'd like to set aside that decision.

Mr. CONYERS. So would I. That's why we've got the bill. Now, noncompliance—if you're not willing to fill out the form so we can determine whether you're discriminating or not, then I don't know how we can do anything but suspend the Federal money coming in.

Mr. PHILLIPS. Sir, but——

Mr. CONYERS. Just a minute.

Mr. PHILLIPS. Excuse me.

Mr. CONYERS. How does this discriminate or prohibit or diminish the role of predominantly black colleges? That was the question, and that's what I am trying to figure out. How a black college, which I have a very profound interest in, how would they be adversely affected?

Mr. PHILLIPS. Well, sir, if I may preface my answer by indicating that in the case of *Grove City College,* it is not my opinion that Grove City College could be correctly construed as having been a recipient of Federal funds since it merely accepted students with basic educational opportunity grants, and did not receive funds directly.

Mr. CONYERS. Well, aren't those Federal funds?

Mr. PHILLIPS. Those are Federal funds to students rather than to the institution.

Mr. CONYERS. You disagree with the Supreme Court on that point.

Mr. PHILLIPS. Indeed I do as I stated in my testimony.

Mr. CONYERS. Well, look, let's get somebody else to introduce a bill to take care of that. Even the people on the bill coming from Dole that I don't think much of, doesn't quarrel with that premise. You're the first person, as a matter of fact, before this committee to have taken issue with that. But even that I don't want to worry about.

Do you have any idea why this was put in your statement that black colleges could be prohibited if H.R. 700 were enacted in law.

Mr. PHILLIPS. Of course.

Mr. **Conyers**. Because what you've said so far in your initial point about the right of free association and private groups not accepting Federal money, to operate any way the want, I agree with and so do most of the people here that are supporting 700.

Wherein does there lie any difference and where would black colleges be adversely affected?

Mr. **Phillips**. Congressman, it seems to me to be manifestly obvious that a college which bars whites from admission is discriminating. Now, I think at black colleges——

Mr. **Conyers**. Are you suggesting that black colleges bar whites from admission?

Mr. **Phillips**. I'm not suggesting anything, sir. I am saying that if a college wanted to be exclusively black——

Mr. **Conyers**. Well, if you're not suggesting that, then what's the issue? The fact of the matter is black colleges don't discriminate, and if you had to come here——

Mr. **Phillips**. With all due respect, Congressman, if you'll permit me to complete the sentence. If a black college discriminates against nonblack applicants for admission, then clearly under this proposed legislation it would be prohibited from Federal funding.

Mr. **Conyers**. But we're all in agreement with that. There's no way that black colleges or any other kind of colleges would be exempt from the Federal law if they were receiving Federal funds and they were discriminating. That's precisely what we are trying to correct.

Mr. **Edwards**. The Chair would like to continue the discussion, but we do have other witnesses coming along. We have to be fair to them, so we would like to move along if we can. Mr. Conyers, we have other Congressmen here too.

Mr. **Conyers**. Well, I'm sorry, Mr. Chairman, but we always get into these long discussions with this particular witness whenever we're together.

Mr. **Phillips**. Congressman, I know we won't agree on everything, but I would point out that there have been effects tests under civil rights legislation, and it could be construed that a black college which did not have a certain proportion of nonblack students was, in fact, discriminating.

Mr. **Conyers**. Well, there is one other point that you can just take back with you, and that's the question about whether we want to apply the Federal law to ourselves in the Congress as equally as we want to give it out to everybody else. I am cosponsor of a bill that would open up fair hiring and affirmative action within the Congress, H.R. 691. And we're trying to pass that bill which it sounds like you would probably support.

Mr. **Phillips**. Well, I would agree that——

Mr. **Conyers**. And what we want to do is that we want to get that bill separate from getting it mixed up with correcting the *Grove City College*. So I'll be looking to see if the conservative caucus is going to give me a little help on promoting that.

Mr. **Phillips**. Maybe you can give us a little help on something too, Congressman.

Mr. **Conyers**. Maybe on something, but it would have to be a lot more specific than what you've been talking about here today.

Mr. EDWARDS. Thank you. The time has expired. The gentleman from Massachusetts, Mr. McKernan is recognized. And because we do have a number of witnesses in the next panel, the Chair will respect the 5-minute rule.

Mr. MCKERNAN. Some centuries ago we were from Massachusetts. I'm from Maine, however, now. I appreciate being recognized, Mr. Chairman.

Mr. EDWARDS. Well, they are both great States.

Mr. MCKERNAN. Mr. Phillips, I gather from what you're saying that you never would have even reached the issue of whether or not the antidiscrimination provisions in title IX apply to just the program for which Federal funds are received, or the whole institution. You don't believe that student aide should trigger title IX.

Mr. PHILLIPS. Yes, sir. My position in certain respects is similar to that expressed by Congressman Garcia.

Mr. MCKERNAN. Do you know why the administration does not take that position? It sort of surprised me, frankly, that they didn't. That's why I was wondering.

Mr. PHILLIPS. Well, it surprised me too, Congressman. I gather from studying Brad Reynolds' testimony, that he personally had some concerns along the same lines that I have. I think it has to do with the politics of the United States Senate, and some of the positions in which Members of the Senate, particularly Senator Dole, found themselves during the debate last fall. I think that's the reason for it.

Mr. MCKERNAN. If you could just step back from your own personal position and assume even if it were not the BEOG's in the *Grove City* case, but some other Federal assistance, why do you think that if we going to say that acceptance of Federal funds triggers the civil rights laws, why do you think that it ought not to apply to the whole institution as opposed to just one little small program for which the funds are received?

Mr. PHILLIPS. If you will permit me, let me walk up to my answer by saying that I do believe that he who pays the piper has a right to call the tune. The Federal Government does have a right to establish standards, in fact, indeed a responsibility, to establish standards which attach to the dollars which it tranmits. Indeed, I have promoted legislation which would require private, nonprofit organizations which are subsidized by the Federal Government, to choose between their Federal money and their political advocacy.

So, I certainly believe that this is a principle that can be advanced. My principal concern is that the lines are not carefully drawn, and that mere association, indirect association with recipients of Federal funds can trigger Federal involvement. And that the question of what is institutionwide can extend beyond even the relatively simple case for a college or university to something far more complex, such as for example, the Catholic Church.

I think the U.S. Catholic Conference, in a paper that it prepared, explored some of the uncertainties that would arise in that regard. So I am not opposed to the principle that the Federal Government can establish conditions for the assigment of its dollars. I think it has to do that. But I am concerned that it will extend its reach and extend its regulatory burden on entities which don't seek Federal funds, and whose association with recipients of Federal funding is more or less incidental.

Mr. McKERNAN. Let me ask you more of a philosophical question then, along those lines. Do you believe that receipt of Federal funds, however we may want to define that, and assuming that we could narrow it to whatever situation you would agree with for receipt of Federal funds, that it is asking too much to say, in return for those funds, that you cannot discriminate?

Mr. PHILLIPS. No, I don't think that's asking too much. If there is a direct recipient, I think that's perfectly valid.

Mr. McKERNAN. So your major concern with H.R. 700, I take it, is that it indirectly would involve people in the antidiscrimination statutes who were not direct recipients of funds in your view.

Mr. PHILLIPS. Well, it's not so much the fact it is an anti-discrimination statute. It's the fact that it creates the potential for the expansion of judicial and bureaucratic authority over what ought to be the private sector. My concern is the source of accountability.

Implicit in the legislation is the idea that the Federal Government has some right to look into intermediary institutions, whether it is family, church, business, college, medicine, or whatever. And I think it's very important to limit the role of civil government.

Mr. McKERNAN. So your concern then, really, is one which has not really been expressed particularly in our hearings so far, which is really not on this legislation, trying to address the *Grove City* case, but rather going beyond the *Grove City* case and saying that you think the *Grove City* case went too far in talking about indirect assistance to institutions. That's your real concern with H.R. 700, not the institutionwide coverage.

Mr. PHILLIPS. There are two aspects to it. One, I believe HEW, the education departments under Carter and Reagan were both wrong in asserting that BEOG's made the schools subject to Federal authority. And then I think the language of H.R. 700 holds out the possibility that an even looser interpretation of what constitutes receipt of Federal funds could govern.

Mr. McKERNAN. Thank you.

Mr. PHILLIPS. Thank you.

Ms. CROOKS. Mr. Chairman, I'm sorry to interrupt, but at the beginning of this session I did have permission to leave, and if there are any questions, the AARP would be glad to have them in writing and put them out to my recommendation.

Mr. EDWARDS. Thank you very much, and I regret that this is taking longer than we anticipated. And the gentleman from Illinois, Mr. Hayes is recognized.

Mr. HAYES. Thank you, Mr. Chairman. I am going to be very brief because we do have another panel as you suggested. I just want to generally state to all the panelists, the testimony that you have given here has been good and short, or your prepared statements.

You clearly enunciated your respective positions. I am somewhat concerned, though. I have to raise a couple of questions with Mr. Phillips. It is the first time we have had the opportunity to meet you.

Mr. PHILLIPS. It's a pleasure to meet you, sir.

Mr. HAYES. One thing that I noticed in your prepared statement, you recognize the fact that in renaming the act itself you were discriminatory. You called it the "Big Brother Act."

Mr. PHILLIPS. Yes, sir. I think the real issue is the power of the Federal Government.

Mr. HAYES. All right. Now, the question I want to raise, in the conclusion of your statement, you stated in your final paragraph, "I urge you to reject H.R. 700 and resist the temptation of increasing your political power over the lives of those who have entrusted you to safeguard their liberties."

My question is, in the "safeguard of liberties," are you including in that grouping, people who are women, minorities, handicapped, or the aged?

Mr. PHILLIPS. Of course, sir.

Mr. HAYES. Do we have a responsibility, as Members of Congress, to safeguard their liberties, too?

Mr. PHILLIPS. Of course.

Mr. HAYES. How can you draw that conclusion and then still be opposed to H.R. 700 as you suggested?

Mr. PHILLIPS. Well, respectfully, sir, I believe that H.R. 700 will require a number of institutions to expend additional funds and take additional time to engage the possibility of Federal oversight in areas whether they are guilty or not. It's like the classic witch hunt where the burden of proof is on the presumptively innocent, or people who ought to be presumptively innocent.

And I think that legislation of this kind, which is as sweeping as it is, is fraught with risk. Every new piece of legislation involves the writing of new regulations. It involves the hiring of additional personnel to try to deal with those regulations and respond to them appropriately. I would rather see less of a burden on the private sector.

I think that we're in a situation where—which is analogous in some respects to the founding of the Internal Revenue Service. When the 16th amendment to the Constitution was enacted, few people anticipated the thousands of pages of regulations which now govern the payment of our taxes each year to the Federal Government. That's something that's just been added on and added on and added on.

And I think here, too, there is a danger that just as individuals now have to hire lawyers and accountants in some cases, or special advisers to fill out their tax forms, that this would open up an additional area where private institutions and personages would have to take extra measures in order to prove that they had not violated law or regulation.

Mr. HAYES. Is your organization supportive or against the 1964 Civil Rights Act?

Mr. PHILLIPS. We're supportive of the idea that where Federal funds are involved, discrimination based on race, or sex, or age, or handicap ought to be prohibited. We are concerned about the manner in which that law has been turned around to argue in favor of affirmative action, and in some cases what could be construed to be quotas.

We're supportive of it insofar as it applies to Federal—the assignment of Federal dollars.

Mr. HAYES. No further questions.

Mr. EDWARDS. The gentleman from Texas, Mr. Armey.

Mr. ARMEY. Thank you, Mr. Chairman. Ms. Rose, I was delighted to have you here today because, by your testimony, you have a long experience as a lawyer involved in civil rights legislation with several agencies, is that correct?

Ms. ROSE. That's correct.

Mr. ARMEY. Now I look at section 2.2 of H.R. 700 which refers to the need for "legislative action being necessary to restore prior consistent and longstanding executive branch interpretations of these for civil rights laws." Of these laws, title IX of the 1964 Civil Rights Act is 21 years old. During that period of time we have had 5 Presidents, 12 Attorney Generals, 9 Secretaries of Labor, 10 Secretaries of HEW, 3 Secretaries of Education, and 6 Secretaries of Agriculture, not to mention the scores of lower level policy setting officials.

Is it your view that among this combined total of over 45 senior level officials, there has been but a single set of totally consistent, totally uniform interpretations of this complex law, in addition to the scores, if not hundreds, of totally consistent Federal court decisions construing this statute?

Ms. ROSE. Well, I am not quite sure how broad your question is. With respect to the interpretation of the words "program" in the two different sections of the act, my experience from 1966 when I first started working with title VI and later with 504 when it became law in the 1970's, up until the 1980's, it was understood that "program" and "activity" was institution wide, except for fund termination it was specific.

This was the interpretation. Nobody questioned it until in the 1980's when some of that questioning began. But the *Grove City* decision, I think, took a lot of people by surprise if one did not look at philosophies of a Supreme Court that changed.

Mr. ARMEY. Are you suggesting then that some place around 1980.

Ms. ROSE. Somewhere in the 1980's you saw it begin, after 15 years, some different interpretations appeared in a few places. But these weren't the people who for 15 years were working inside of Government and with Government in this area.

Mr. ARMEY. Well, what interpretations are we then to expect this law to restore, those that took place before the 1980's, or those that took place since the 1980's.

Ms. ROSE. Well, I think there are a lot of doctrine and law. The law as it has been long interpreted is what the law means, especially when Congress enacts other laws, title IX, 504, and the Age Discrimination Act, are other laws following the earlier interpretation, that when administrative agencies promulgate regulations, and those are the administrative agencies that promulgate those regulations contemporaneously with the statute, and they were the people who worked with Congress in enacting the original law, and there are lots of cases that say that, that that is given great weight.

I think it is the Johnnies-come-lately that have changed the law—that have changed it. Now, the Supreme Court is the ultimate word because it spoke, but within our system, Congress is really the ultimate word, saying, "You are wrong. You change law. We're going back to what we thought it meant for 15 years, and when we pass these subsequent laws, that is what it meant in title IV and those laws."

Mr. **Armey**. Let me ask you—it is my understanding that these Johnnies-come-lately were duly elected and duly appointed through the democratic processes of our country.

Ms. **Rose**. Absolutely, but they should say—and I am not talking about Johnnies-come-lately here—I am talking about Johnnies-come-lately in the court system that are giving it a different interpretation.

Mr. **Armey**. I see.

Ms. **Rose**. Congress always has the right to change law.

Mr. **Armey**. Let me ask you how you would interpret the statement that I extended to you, this question.

Ms. **Rose**. I'm not sure. What do you——

Mr. **Armey**. This is a very important part of this law that concerns me and concerns others a great deal because, as Mr. Phillips was saying earlier, the basic question is, in this law, H.R. 700, will it be possible for somebody to avoid the burden of ex ante compliance demonstration by simply refusing the Federal money as a primary or secondary recipient?

Ms. **Rose**. Absolutely. And if you are referring to the questions you asked, I think, of the last panel, about the word "extended," that's the first time I have ever heard, in 20 years, anybody give that interpretation, that you can refuse it and still be covered.

Mr. **Armey**. If you were to tell me that you extended me aid, I would interpret that to mean that you offered it to me.

Ms. **Rose**. Extended has always been interpreted "gave you aid which you accepted."

Mr. **Armey**. And you are perfectly willing to have these Johnnies-come-lately that you are now looking at give their interpretation to that word?

Ms. **Rose**. Well, if the Johnnies-come-lately did it, I think I would be more comfortable defending the other position and to extend a little further the remarks of one of the witnesses on the earlier panel when she said that as a lawyer, she wouldn't take the case on a contingency basis.

I wouldn't take the case even on a per-hour basis because as an officer of the court, I think I would have an ethical responsibility to say that that position is so all wet, I'd be taking your money and stealing it.

Mr. **Armey**. I understand. And that is, I think, very clearly reflective of some of the concerns.

Now, Mr. Phillips, which I by the way liked, you talked about protecting liberties. I thought it was very well put. I assume that you are concerned with the liberties of all Americans irrespective of race, color, creed, sex, national origin, age.

Mr. **Phillips**. Indeed, as I tried to convey to Congressman Hayes.

Mr. **Armey**. Well, I would like to see your reaction to something here, something that I am bothered by. In January 1985, members of the U.S. Commission on Civil Rights, Mary Barry and Blandina Ramos, made a statement in response to the Supreme Court's decision regarding the *Memphis Firefighter* case, which said in part, "civil rights were not passed to give civil rights protection to all Americans as the majority of the Commission seems to believe."

Mr. Chairman, I have an editorial here from the Washington Post that I would like to submit for the record.

Mr. **Edwards**. Without objection, it will be included in the record, and the time of the gentleman has expired.

The gentleman from Ohio was next. All right, the gentleman from Wisconsin.

Mr. **Sensenbrenner**. Mr. Chairman, I yield my time to the gentleman from Texas so that he can ask his question.

Mr. **Edwards**. The gentleman from Texas is recognized for an additional 5 minutes.

Mr. **Armey**. Thank you. Mr. Phillips, my question is, do you and your organization, would you agree with that proposition, with Mary Barry's assertion?

Mr. **Phillips**. No. I believe that laws should apply universally. That's why even though I have disagreements with certain of the laws to which Congressman Conyers made reference and to which I made reference in my testimony, it is my view that if they apply to one citizen, white, black, old, young, or what, in Congress or out of Congress, they should apply to all.

So that's one case where the old adage, that a broken clock is right even twice a day, applies. In that case I would agree with Congressman Conyers.

Mr. **Armey**. I appreciate that. I was very distressed by that statement and, I'm afraid, the kind of thinking that it so often reflects, and I thank you for your time.

Mr. **Phillips**. With respect, if I may, to my colleague on the panel, Ms. Rose. I would also say that it wouldn't be necessary for an attorney to go on a contingent fee or hourly fee basis to challenge the meaning of the word "extended." We have literally thousands of federally funded attorneys who have brought lawsuits on matters more tangential than that.

Mr. **Armey**. Thank you.

Mr. **Edwards**. Mr. DeWine.

Mr. **DeWine**. Thank you, Mr. Chairman. I have a question for Ms. Rose. Let me give you a hypothetical. Pretend like I am the client and you're the attorney, and I happen to run a hospital. I obviously receive Medicare and Medicaid payments, both. I come to you and for some strange reason I tell you I want to do something that would be classified as discriminatory. I want to know from you what is the current status of the law today if I accept those funds. What's the status? In other words, am I covered today?

Ms. **Rose**. Well, I would have to ask you several more questions.

Mr. **DeWine**. OK.

Ms. **Rose**. I would say that if you wanted to run an institution and have a restriction for white people only, but you still wanted Medicare money, I would advise you——

Mr. **DeWine**. Can I separate it?

Ms. **Rose**. Yes.

Mr. **DeWine**. Is it institutionwide? Am I covered institutionwide?

Ms. **Rose**. Until *Grove City* came down, I would say you could not do it. After *Grove City* came down, I am afraid—and this is putting it back to one of the things we discussed—I was a middle-level bureaucrat, I wasn't making the policy, but it was discussed and I participated at many meetings. It was discussed back in 1966, that you could have an institution and have a Medicare wing. You could get your Medicare money, and just have your Medicare wing integrated, and the rest of the hospital could be white only.

This is the one thing we feared then, and I fear that this is a consequence in the hospital industry—not the hospital industry—for a small number of hospitals. I am not saying that hospitals are purposely doing today what they did 20 years ago in certain areas. But there are some hospitals which would prefer not to have minorities, or not to have so many minorities, or not to have poor minorities, or not to have Medicaid minorities because these tend to be poorer, the poorest of the poor. That is what I fear in maybe 5 or 10 percent of the hospitals, especially in rural areas, we would find.

Mr. **DeWine**. Just so I understand your testimony, you are basing this on an extrapolation, if I can use the term, from *Grove City*. There are no other cases that you could cite me as a client, other than *Grove City?* What you be saying to me is, "I've read *Grove City*. This is how I interpret it. A court would probably interpret it this way."

Would that be your advice to me? Would your advice be to go ahead? Am I safe in doing it?

Ms. **Rose**. Well, I would say if you wanted to try it—you're saying I am extrapolating, of course—all of the hospitals accepted in 1966 was broader interpretation. The American Hospital Association accepted it. There were some that fought us and used, I think, the argument Mr. Phillip used, that Medicaid was not Federal financial assistance.

There were hospitals that did raise the program argument. There were hospitals that didn't participate for 4, 5, and 6 years until they found they really had to come into the Medicare system.

It is more prevalent in the nursing care industry. But these things are possible and they would give those institutions—nursing homes, there is probably even a greater danger with nursing homes—are very likely now to seize on this and take that position, because there are a lot of institutions, nursing homes—families want their parents to be living in an institution that is more like their neighborhood or their environment, and if they have enough money and—you know, in the Palm Beach's and places like that—maybe not even as rich as the Palm Beach's—they can do it, I think, under the *Grove City* and yet accept Medicare in another building.

Mr. **DeWine**. So it is your legal opinion that they could do that under *Grove City*. I just wanted to make sure I understand.

Ms. **Rose**. I believe that they could. I'm concerned that they could, and I am concerned that we would be fighting this and it would be 4, 5, or 6 years. And who knows what the Supreme Court will do. I'd defend against it, but I think I might lose under *Grove City*.

Mr. **DeWine**. As of today, you don't have any examples of anybody who has tried this, or any court decisions?

Ms. **Rose**. Nobody has brought it in litigation, and I happen not to be doing immediately, at this point, health civil rights work. I'm doing mental health work. But these are things that I, from my background and experience, know that are a very real possibility.

Mr. DeWine. Thank you. Thank you, Mr. Chairman.

Mr. Edwards. Well, we thank this panel. We are sorry about the delay, but you have been useful and very articulate and we appreciate it very much.

The afternoon panel will now be asked to testify. The afternoon panel has to do with education, and we have a number of panel members. I will introduce them individually. It will consist of Father William Byron, representing the National Association of Independent Colleges and Universities; Mr. Robert H. Kapp, representing the Lawyers' Committee for Civil Rights Under Law.

We also are fortunate having Father Byran Hehir. How do you pronounce that?

Mr. Hehir. Hehir.

Mr. Edwards. It's just like "Hair." I always say English is the toughest language to pronounce.

And Mr. Bruce Hafen, is that correct?

Mr. Hafen. Yes, sir.

Mr. Edwards. Mr. Hafen is president of Ricks College, and president of the American Association of Presidents of Independent Colleges and Universities.

You are all welcome. Without objection, all of the statements will be made a part of the record.

Mr. Edwards. I believe Father William Byron is first, representing the National Association of Independent Colleges and Universities.

TESTIMONY OF REV. WILLIAM BYRON

Reverend Byron. Thank you, Mr. Chairman. That association is an organization which represents about 900 private institutions of higher education in the United States. I am also speaking for the other groups listed on the cover page of the testimony.

I'd like first to express our strong commitment to the social policy goals of equal opportunity for educational advancement regardless of race, sex, age, or handicap. We at the same time recognize the importance of seeking a proper balance between equal rights under the law and concern for individual freedom. As tax-exempt institutions, we're grateful for a statement made last year in the other Chamber during consideration of civil rights legislation, expressing, and I am quoting, "no intent on the part of the bill's sponsors either to alter the current definitions of . . . Federal financial assistance or to alter substantive provisions afforded by these laws . . . for instance," the quotation goes on, "tax exemptions . . . would continue to be excluded from the definition of Federal financial assistance."

The four statutes which will be amended by H.R. 700, the Civil Rights Restoration Act of 1985, have provided an important mechanism for eliminating various forms of discrimination relating to educational and employment opportunity. Since the enactment of these laws, substantial progress has been made in reducing all forms of bias in our institutions.

It is our position that enactment of this legislation is warranted at this time to ensure that educational rights are protected to the fullest extent. We subscribe to the bill's broad coverage of colleges and universities on an institutionwide basis and we, therefore, express support for H.R. 700 so far as it relates to higher education.

As to the breadth of coverage intended under H.R. 700, we seek, as do the sponsors of this legislation, to return to the law as it was understood by many, I would say most really, prior to the *Grove City College* v. *Bell* case. While we support the concept of institutionwide coverage, H.R. 700 raises in our minds several important questions in the areas of scope of that coverage and of enforcement procedures.

First, we agree that Federal financial assistance to a program or activity at a college should subject the entire institution to coverage under the four statutes. We question, however, the meaning of the term in subpart (4) which will bring "any other entity" under coverage of the statutes. We find this term ambiguous. Our concern is, for example, that an entire diocese or a conference or a jurisdiction might be subject to coverage as a single entity if one of its schools or colleges receives Federal assistance. That coverage would be a departure from existing law and interpretations. We would ask that the committee address this problem through appropriate definition or clarification.

Second, in the enforcement area, we understand that the sponsors' intent is to ensure that the pinpointed fund termination would be limited to the "particular program, or part thereof, in which noncompliance has been found." The language of H.R. 700, however, would change the statute so that the termination of Federal financial assistance shall be limited to "assistance which supports the noncompliance." We ask that the term "which supports" be either deleted or clarified to ensure continued pinpointed fund termination.

Third, we believe there is a need for an articulated restoration of the presumption that institutions are deemed innocent until proven guilty. We would request that the statute's enforcement provision be changed to provide that no funds be terminated until there is a final judicial determination as to whether a discriminatory act has occurred.

Fourth, we have general concerns about uniform and consistent enforcement of these laws. Administrative regularity mandates that all regional offices enforce the law in the same manner.

Institutions of higher education are not asking for an exemption from the laws covering society as a whole, but are requesting that they be accorded evenhanded and appropriate treatment in any complaint investigation. We reassert our willingness to advise enforcement personnel so that they might better understand the unique ways that colleges and universities function.

Now, to the religious exemption which applies solely to title IX. The last area of concern to NAICU involves the title IX religious exemption.

This exemption provides an important guarantee of the full exercise of religious liberty for church-related schools and we support these protections under the law. You may perhaps remember the history of this particular exemption, specifically a July 1975 hearing before the Subcommittee on Equal Opportunities. The hearing was in response to House Concurrent Resolution 330, a resolution which would have disapproved three specific sections of the title IX proposed regulations because they were inconsistent with the statute. One of the three issues under consideration was whether the regulation requiring a written statement from a college was consistent with the statute. It was argued that such a requirement was an unnecessary administrative burden and an infringement on the rights of religious institutions.

Ms. Gwendolyn Gregory, acting as spokesperson for the Department of Health, Education, and Welfare at the time, made it quite clear that was not the intent. She stated that the regulation "establishes a procedure for determining which activities and practices of various institutions are not covered by title IX . . . It does not, and was not intended, to place the Department in the position of judging the validity of religious tenets . . . The statement must identify the provisions of the regulation which conflict with a specific religious tenet, but it need not cite or explain the tenet other than may be necessary to clarify what portion of the regulation is affected."

The institution seeking exemption must be asked to do three things. First, indicate it is religiously controlled. Second, indicate that certain religious tenets conflict with the regulations. And third, list the specific relevant regulations.

Between enactment of the regulations in 1975, and now, there have been 218 statements of exemption. Until this year, the Department of Education had begun no substantive action upon these statements and institutions were left uncertain of their status. Clearly, this has a chilling effect on the exercise of religious liberty. We hope that final resolution can proceed in a timely and reasonable fashion.

It appears that part of the difficulty encountered in making determinations on religious exemption requests is the definition of the term "religiously controlled" institutions. Years ago, the Department chose its own administrative interpretation and defined control as meeting one of the following conditions.

First, it is a school or department of divinity; or, second, it requires its faculty, students, or employees to be members of, or otherwise espouse a personal belief in the religion of the organization by which it claims to be controlled; or, third, its charter and catalog, or other official publication, contains explicit statement that it is controlled by a religious organization or an organ thereof or is committed to the doctrines of a particular religion, and the members of its governing body are appointed by the controlling religious organization or an organ thereof, and it receives a significant amount of financial support from the controlling religious organization or an organ thereof.

Now, we would recommend that the third condition read, "Its charter and catalog, or other official publication, contains explicit reference that it is related to a religious organization or an organ thereof or is committed to the doctrines of a particular faith community."

We believe that the conditions relating to the governing body and financial support are no longer appropriate. Over the years, as colleges and universities matured as educational institutions, colleges once tightly linked to churches began to expand the makeup of their governing bodies. Since many of those boards of directors are now independent and self-perpetuating, requiring the governing body to be appointed by the religious organization is no longer relevant or appropriate.

The condition requiring significant financial support is equally inappropriate. Financial support from religious organizations to their institutions has decreased substantially. Most institutions cannot possibly meet such a condition, through no fault of their own or of the religious organization.

We ask that a statutory definition of "religious control" be included in this bill. We stand prepared to work with the committee on these and any other issues with which we can be of assistance.

So, in conclusion, we once again state our support for H.R. 700 so far as it relates to colleges and universities. Our intent is to improve and clarify the legislation so that our colleges and universities have a clear understanding of their duties and responsibilities in the area of civil rights.

Thank you, Mr. Chairman, and I'd be happy to respond to questions.

[The prepared statement of Rev. William J. Byron, S.J., follows:]

Prepared Statement of Rev. William J. Byron, S.J.

Introduction

I am William Byron, President of the Catholic University of America in Washington D.C. I am pleased to appear before this distinguished Joint Committee today and welcome the opportunity to testify on an issue of great importance to the higher education community. I appear on behalf of the National Association of Independent Colleges and Universities, an organization which represents almost 900 private institutions of higher education across the country, as well as the other associations listed on the cover page of my testimony. NAICU represents a broad range of institutions, from the large research university to the small church-related college; it is this diversity within NAICU which has contributed so richly to the strength of the independent sector.

Support for H.R. 700 So Far As It Relates to Higher Education

I would like to first and foremost express our strong commitment to the social policy goals of equal opportunity for educational advancement regardless of race, sex, age or handicap. We embrace these social policy goals as part of our fundamental responsibility as institutions of higher learning. We, at the same time, recognize the importance of seeking a proper balance between equal rights under the law and concern for institutional freedom. As tax-exempt institutions of higher education, we remain committed to the goal of excellence in higher education through a system offering both access and choice to potential college students. As tax-exempt institutions, we are grateful for a statement made last year in the other chamber during consideration of civil rights legislation, expressing "no intent (on the part of the bill's sponsors) either to alter the current definitions of...federal financial assistance...or to alter substantive protections afforded by these laws...for instance, tax exemptions..would continue to be excluded from the definition of federal financial assistance." That is an important base upon which to build any consideration of the interweave of social policy goals and federal financial assistance.

The four statutes that will be amended by H.R. 700, the Civil Rights Restoration Act of 1985, have provided an important mechanism for eliminating various forms of discrimination relating to educational and employment opportunity. Since the enactment of these laws -- Title IX of the Education Amendments of 1972, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 -- and the promulgation of the applicable regulations, substantial progress has been made in reducing all forms of bias in our colleges and universities. This progress has contributed in a meaningful way to the initial legislative purpose of eliminating discrimination throughout the American educational system.

It is our position, to the degree that it impacts on higher education, that enactment of this legislation is warranted at this time to ensure that educational rights are protected to the fullest extent and to signify rededication to the goals of existing civil rights statutes. We subscribe to the bill's broad coverage of colleges and universities on an institution-wide basis and we, therefore, express support for H.R. 700 so far as it relates to higher education.

Breadth of Coverage and Enforcement

As to the breadth of coverage intended under H.R. 700, we seek, as do the sponsors of this legislation, to return to the law as it was understood by many prior to the Grove City College v. Bell case. While we support the concept of institution-wide coverage, H.R. 700 raises in our minds several important questions in the areas of scope of that coverage and of enforcement procedures. We would ask the Committee to consider certain changes to meet these concerns.

First, we agree that federal financial assistance to a program or activity at a college should subject the entire institution to coverage under the four statutes. We question, however, the meaning of the term in subpart (4) which will bring "any other entity" under coverage of the statutes. We find this term confusing and ambiguous. Our concern is, for example, that an entire diocese might be subject to coverage as a single entity if one of its schools or colleges receives federal assistance. This coverage would be a departure from existing law and interpretations. We ask that the Committee address this problem through appropriate definition or clarification.

Second, in the enforcement area, we understand that the sponsors' intent is to insure that the pinpointed fund termination remedy utilized prior to Grove City is retained. Thus, termination would be limited to the "particular program, or part thereof, in which noncompliance has been found." The language of H.R. 700, however, would change the statute so that the termination of federal financial assistance shall be limited to "assistance which supports the noncompliance." We ask that the term "which supports" be either deleted or clarified to insure continued pinpointed fund termination.

Third, in the same vein, we believe there is a need for an articulated restoration of the presumption that institutions are deemed innocent until proven guilty. Unfortunately, enforcement personnel have in numerous instances departed from that presumption in the conduct of their investigations. As an added safeguard against possible harassment and in order to assure equitable treatment, we would request that the statute's enforcement provision be changed to provide that no funds be terminated until there is a final judicial determination as to whether a discriminatory act has occurred. We would advocate that funds be terminated in a particular program only upon an actual finding of discrimination.

Fourth, we have general concerns about uniform and consistent enforcement of these laws. Administrative regularity mandates the publication of a field enforcement handbook for these statutes to ensure to the fullest extent possible that all regional offices enforce the law in the same manner. Over the years, it has been a constant irritant to administrators, as well as protected groups, to have conduct and remedial plans acceptable in one region of the country rejected in another. Similarly, to ensure further uniform and consistent enforcement, we would suggest that a system should be devised whereby all questions of first impression are forwarded to Washington for determination.

Institutions of higher education are not asking for an exemption from the laws covering society as a whole, but are requesting that they be accorded even-handed and appropriate treatment in any complaint investigation. We reassert our willingness to advise enforcement personnel so that they might better understand the unique ways that colleges and universities function.

Religious Exemption Under Title IX

The last area of concern to NAICU involves the Title IX religious exemption. Currently Title IX provides a limited exemption from enforcement of the Title IX Regulations for "an educational institution which is controlled by a religious organization to the extent application would not be consistent with the religious tenets of such organization." If an educational institution wishes to claim the exemption, the implementing Regulations of the statute provide they must "submit in writing to the Director a statement by the highest ranking official of the institution, identifying the provisions of Title IX which conflict with a specific tenet of the religious organization." Many of the institutions I represent today are deeply committed to certain religious principles and as such, are concerned about the interpretation and implementation of this provision of the statute and the corresponding Regulations. It is important to keep in mind that this does not provide a blanket exemption but rather, is limited to that portion of the Regulations specified as being inconsistent with religious tenets. This exemption provides an important guarantee of the full exercise of religious liberty for church-related schools and we support these protections under the law.

Mr. Chairman, you, and perhaps others in this room, may recall the history of this particular exemption, specifically a July, 1975, hearing before the Subcommittee on Equal Opportunities, which you chaired. The hearing was in response to House Concurrent Resolution 330, a Resolution which would have disapproved three specific sections of the Title IX Proposed Regulations because they were inconsistent with the statute. One of the three issues under consideration was whether the Regulation requiring a written statement from a college was consistent with the statute. It was argued that such a requirement was an unnecessary administrative burden and an infringement on the rights of religious institutions.

Ms. Gwendolyn Gregory, acting as spokesperson for the Department of Health, Education and Welfare at the time, made it quite clear that was not the intent. She stated that the Regulation "establishes a procedure for determining which activities and practices of various institutions are not covered by Title IX...It does not, and was not intended, to place the Department in the position of judging the validity of religious tenets...The statement must identify the provisions of the Regulation which conflict with a specific religious tenet, but it need not cite or explain the tenet other than may be necessary to clarify what portion of the Regulation is affected."

Upon final consideration of the religious exemption, the Regulation was deemed consistent with the statute and thus implemented. Thus, the institution seeking exemption is asked to do three things: 1) indicate it is religiously controlled; 2) indicate that certain religious tenets conflict with the Regulations; and 3) list the specific relevant Regulations.

Between enactment of the Regulations in 1975, and now, there have been 218 statements of exemption, from various institutions across the country, most submitted in the late 1970's. Until this year, the Department of Education had begun no substantive action upon these statements and institutions were left uncertain of their status. Clearly, this has a chilling effect on the full exercise of religious liberty. As we understand it, the Department has recently begun to refer the pending requests to the 10 Office of Civil Rights regional directors for consideration. While we applaud this recent action, allowing several years to lapse before beginning such action is unwarranted and unreasonable. We hope that final resolution can proceed in a timely and reasonable fashion.

It appears that part of the difficulty encountered in making determinations on religious exemption requests is the definition of the term "religiously-controlled" institutions. Years ago, the Department chose its own administrative interpretation and defined control as meeting one of the following conditions:

(1) It is a school or department of divinity; or

(2) It requires its faculty, students, or employees to be members of, or otherwise espouse a personal belief in, the religion of the organization by which it claims to be controlled; or

(3) Its charter and catalog, or other official publication, contains explicit statement that it is controlled by a religious organization or an organ thereof or is committed to the doctrines of a particular religion, and the members of its governing body are appointed by the controlling religious organization or an organ thereof, and it receives a significant amount of financial support from the controlling religious organization or an organ thereof."

We would recommend that that Department definition of religious control, with appropriate changes, be included in the statute to give clear guidance to current and future Administrations. We believe that the first and second conditions required to qualify for a religious exemption are adequate as stated, but submit that the third condition is no longer appropriate as currently written. We would strongly recommend that the third condition read "Its charter and catalog, or other official publication, contains explicit reference that it is related to a religious organization or an organ thereof or is committed to the doctrines of a particular faith community."

We believe that the conditions relating to the governing body and financial support are no longer appropriate. Over the years, as colleges and universities matured as educational institutions, colleges once tightly linked to churches began to expand the make-up of their governing bodies.

They began to include members who could help promote and administer quality education but who were independent of the controlling religious group. This result, which we see as a positive trend, points to the conclusion that since many of those Boards of Directors are now independent and self-perpetuating, requiring the governing body to be appointed by the religious organization is no longer relevant or appropriate.

The condition requiring significant financial support is equally inappropriate. As complexities have arisen and budget constraints have lessened the monies available, financial support from religious organizations to their institutions has decreased substantially. Most institutions cannot possibly meet such a condition, through no fault of their own or of the religious organization.

Based on the above recommendations, we ask that a statutory definition of "religious control" be included in this bill. We stand prepared to work with the Committee on these and any other issues with which we can be of assistance.

Conclusion

In conclusion, we once again state our support for H.R. 700 so far as it relates to colleges and universities. In urging certain amendments, we by no means intend to lessen our support for the basic thrust of the bill. Our intent is to improve and clarify the legislation so that our colleges and universities have a clear understanding of their duties and responsibilities in the area of civil rights.

Colleges and universities support the spirit and letter of the laws affected by H.R. 700 and re-pledge our efforts toward fulfillment of the goals underlying those laws.

Thank you for asking me to appear before this Committee. I would be happy to answer any questions you may have.

Mr. **Edwards**. Well, thank you very much, Father Byron, and we are going to work with you on your suggestions.

The next witness, member of the panel to testify is Mr. Robert H. Kapp, representing the Lawyers' Committee for Civil Rights Under Law.

Mr. Kapp.

TESTIMONY OF ROBERT H. KAPP

Mr. **Kapp**. Thank you, Mr. Chairman. I am pleased to appear before you today on behalf the the Lawyers' Committee for Civil Rights in support of H.R. 700. We urge prompt, favorable action by both committees so that this important legislation can be enacted as swiftly as possible. This action is essential to restore what President Kennedy described in 1963 as simple justice, that public funds to which taxpayers of all races contribute, not be spent in any fashion which encourages, subsidizes, or results in racial discrimination.

The Supreme Court's decision of last year in the *Grove City* case has created wide gaps in civil rights enforcement. Because of that decision, which we think misconstrued the intent of earlier Congresses which enacted the great civil rights legislation of the 1960's and the 1970's, minorities, women, and the handicapped have been left without adequate protection against invidious discrimination by institutions receiving vast amounts of Federal funding.

By passing H.R. 700, this Congress will be restoring the broad protection afforded by Federal agency enforcement practices prior to the *Grove City* ruling. Despite the progress made in the last two decades, it is far too early in the struggle for equality to put aside the tools that have helped us get this far.

The *Grove City* decision sharply narrowed the scope of title IX, and inferencially title VII's prohibition against discrimination by colleges and universities receiving Federal funds. In holding that title IX merely requires Grove City College, whose students finance their educations with Pell grants, not to discriminate in its administration of student financial aid programs, the Supreme Court reached a result that we think would astonish the Congresses that enact title VI and title IX.

For the effect of the Court's narrow reading of the rule's "program or activity" in Section 901, is that a school whose students receive Pell grants may subject women or minorities to any kind of unequal treatment based upon their sex or race, except that if it admits them, as students, it may not discriminate against them in the award of financial aid.

The result trivializes the great purpose of title VI and title IX and the other Federal antidiscrimination laws.

Our concerns are not purely hypothetical. The impact of the *Grove City* ruling on civil rights enforecement in the real world has already been great. The Department of Education alone has closed, suspended, or refused to proceed in approximately 60 cases involving allegations of race, sex, and handicap discrimination in federally supported institutions where it has not been established that Federal assistance is traceable to the particular component of the institution in which the discrimination was alleged to have occurred.

Some of the cases in which the Department has refused to proceed are indeed startling. As just one example, the Department of Education refused to investigate charges of sexual harrassment at a major university on the ground that the particular building in which occurred had not been built with Federal funds.

In placing the focus on the tracing of funds, Federal antidiscrimination laws have been distorted into a complex and ineffective schemes that dash the hopes for equality of opportunity.

The lawyers' committee submits that the requirement of nondiscrimination should apply broadly to institutions or entities which are the recipients of Federal financial assistance as would be provided by H.R. 700. Narrow definitions of coverage, whether they utilize the approach of the *Grove City* majority, or that of the administration's bill with respect to educational institutions, unavoidably place a Government imprimatur upon continued discrimination by limiting the obligation to eliminate it in institutions that are plainly the beneficiaries of Federal largess.

Since there is no disagreement about the goal of eradicating such discrimination, there is no adequate justification for compelling Federal enforcement agencies to expend enormous resources in order to determine whether or not a claim that discrimination has been practiced by an admitted recipient of Federal assistance can be investigated and redressed.

In closing, I would point out that we cannot credit the assertion of Assistant Attorney General Reynolds that H.R. 700 will work some kind of enormous, intrusive expansion of Federal regulatory authority into private affairs. The statutes in question do not give Federal agencies the power to regulate at will in the economic, academic, or any other spheres of private decisionmaking. They are painfully simple. They require only that where Federal dollars flow, there be no discrimination based on race, sex, national origin, age, or handicap discrimination—condition. H.R. 700 is concerned only with the prohibition of discriminatory conduct, and area which has been recognized as a particularly proper Federal concern since the adoption of the 13th and 14th amendments.

The lawyers' committee strongly urges passage of this important legislation without delay. I would be pleased to answer any questions from members of the committee.

[The prepared statement of Robert H. Kapp follows:]

PREPARED STATEMENT OF ROBERT H. KAPP

Chairman Hawkins, Chairman Rodino, and Members of the Committees:

I am Robert H. Kapp, of Washington, D.C., Co-Chair of the Lawyers' Committee for Civil Rights Under Law. I am pleased to appear before you today on behalf of the Lawyers' Committee in support of H.R. 700, the "Civil Rights Restoration Act of 1985." We urge both Committees of the House to report out this measure favorably and promptly following the conclusion of these hearings so that this essential legislation can be enacted as quickly as possible. It is tragic that in 1984, although H.R. 5490 (a similar measure) passed the House overwhelmingly, the short time available at the close of the last Session prevented its adoption in the Senate.

Enactment of this measure is necessary to close gaps in civil rights enforcement that were created by the Supreme Court's Grove City ruling.[1] Because of that decision, which we think misconstrued the intent of the earlier Congresses which passed Title VI of the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, many individuals have been left without adequate protection or redress should they be subjected to invidious discrimination by institutions or agencies which receive millions or billions of dollars in federal funding. By passing H.R. 700, this Congress will be restoring a mechanism to provide relief should such discrimination occur.

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[1] Grove City College v. Bell, 79 L. Ed. 2d 516 (1984).

Taking this action does not signify, as some have suggested, that our nation has not made substantial strides over the last generation in eradicating the corrosive effects of bias and prejudice. Significant gains have occurred, as demonstrated by the increasing numbers of racial and ethnic minority persons, women, senior citizens and the disabled who can now participate in "mainstream" economic, political, educational and other institutions in our society. Our satisfaction with the progress which has been achieved, however, should not cause us to ignore the reality that discrimination can and does still occur. Contemporary administrative and judicial determinations bear witness to the fact that it is still far too early in our struggle against discrimination to put away the tools which have helped us to get this far.

Restoring the administrative and judicial processes to remedy discrimination by enacting H.R. 700 also should not cause us to lessen our efforts to improve the efficacy and fairness with which our civil rights laws are enforced. Under each of the statutes affected by this measure, recipients of federal assistance are not presumed to discriminate and are guaranteed due process through extensive procedural and appeal rights in the administrative process.[2] These rights should be respected, and we are confident that the Congress will continue to exercise its oversight responsibilities to insure that this happens. Similarly, we support strategies to minimize the possibility that recipients will be subjected to different standards and overlapping jurisdiction. The exercise of coordinating responsibility by a lead Department or agency, which, for example, the Justice Department carries out for Title VI and the Department of Health & Human Services provides for the Age Discrimination Act, helps to insure consistency of substantive approach by federal agencies; and inter-Department delegation or referral agreements speed the process of investigations and avoid duplication. Such techniques should continue to be explored and are, of course, unaffected by H.R. 700.[3]

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[2] See 130 Cong. Rec. H 6800 (daily ed., June 25, 1984)(remarks of Rep. Bartlett).

Finally, we cannot agree with Assistant Attorney General Reynolds that the bill will work some kind of enormous, intrusive expansion of federal regulatory authority into private affairs. The statutes in question do not give federal agencies the power to regulate, at will, in the economic, academic, or any other spheres of private decisionmaking. They are painfully simple.

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[3] We agree fully with the comments of Rep. Bartlett on this subject:

> Receipt of Federal financial assistance brings with it the obligation to complete assurance forms, to submit to monitoring by Federal agencies, and to answer charges of discrimination. This obligation may be construed as a burden. However, it is a burden which can be relieved by streamlining of administrative policies which affect recipient burdens associated with assurance forms, monitoring visits, and discrimination charges. Such streamlining suggests procedural rather than substantive modification in the implementation of civil rights protections, and poses an issue not affected by [H.R. 700].

130 Cong. Rec. H 6809 (daily ed., June 25, 1984).

They require only that where federal dollars flow, there be no discrimination based on race, sex, national origin, age or handicapping condition.

It is indeed ironic that Mr. Reynolds has referred to the bill as creating "federal supervision, regulation, intervention, intrusion and oversight . . . [o]nerous administrative reporting requirements, disruptive agency compliance reviews, and massive bureaucratic paperwork . . . ." We do not think that is an accurate description of past, much less current, federal enforcement efforts, which have led to the progress to which I have referred. In any event, as an officer of the United States, it is up to Mr. Reynolds, and to his counterparts in other Departments, to manage their staffs in such a way as to avoid the unnecessary disruption and intrusion which he claims to fear. We have no doubt that this can be done. The minimal burdens occasioned by a properly functioning antidiscrimination enforcement system should be willingly shouldered by the citizens of a free society which is dedicated to the realization of equal opportunity.

The remainder of my testimony today will cover a few major areas about the bill. I will describe the pressing need for the legislation in light of the Supreme Court's *Grove City College* decision. I will speak to the issues of breadth of coverage of educational institutions and other entities under Title IX and the other statutes. Finally, I would like to comment on some of the concerns which have been raised about this legislation.

The Lawyers' Committee

I would like to start by providing a brief description of the Lawyers' Committee and its involvement with the questions that are before you.

The Lawyers' Committee for Civil Rights Under Law was established at the request of the President of the United States. On June 21, 1963, John F. Kennedy met with several hundred leading American lawyers whom he had invited to the White House in the wake of violent reactions to civil rights demonstrations in Alabama and Mississippi. Expressing dismay at the lack of respect for the commands of the Constitution as interpreted by the American judicial system, both the President and the Attorney General urged the Bar to play a more active role in assuring that racial progress could be made consistent with the Rule of Law. The Lawyers' Committee was formed in response to this plea, and it has since that time made important contributions through peaceful and legal means toward the realization of equal opportunities for all Americans.

As Lloyd Cutler, former Counsel to the President and one of my distinguished predecessors as Co-Chair, said of the Committee on a similar occasion nearly thirteen years ago, "our principal activity is to take part in the trial and appeal of cases that raise significant issues relating to the rights of minority and other disadvantaged groups."[4] Initially, the Lawyers' Committee sponsored volunteer attorneys who travelled to Mississippi in the summers of 1963 and 1964 to advise and represent individuals involved in non-violent civil rights demonstrations. In 1965, we opened a full-time-staffed office in Jackson to deal with the continuing and serious legal difficulties of minority citizens in that state. In 1968, following disorders in many northern cities, the Committee established local offices in fourteen cities from Boston to Los Angeles to stimulate and coordinate the involvement of attorneys from the private bar in civil rights litigation at the local level. Many of these offices have evolved into separately incorporated, locally funded, nonprofit organizations.

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[4] School Busing: Hearings Before Subcommittee No. 5 of the House Comm. on the Judiciary, 92d Cong., 2d Sess. 1178, 1179 (1972).

For well over a decade now, the Lawyers' Committee also has operated, in its national office in Washington, projects focusing on specific substantive areas of the law that are of particular concern to minorities and the disadvantaged. The attorneys working on these projects have developed a high degree of expertise, and have played important roles in the development of legal principles, in such domains as education, employment discrimination, voting rights, and the provision of governmental services to predominantly minority neighborhoods.

The Committee has had a longstanding and especial concern about federal administrative enforcement of civil rights laws. In the 1970's, for example, it issued comprehensive studies of discrimination in federally supervised state employment services, and in state and local law enforcement agencies receiving funding under the Omnibus Crime Control and Safe Streets Act. The Committee, along with other organizations, pressed the Attorney General to issue coordinating regulations for all Executive Departments under Title VI of the Civil Rights Act of 1964. (Regulations outlining the minimum content of enforcement programs were issued in 1976.)[5] The Committee provided counsel to black police officers who brought suit in 1975 to enjoin the Law Enforcement Assistance Administration to carry out its civil rights enforcement responsibilities.[6] Its staff has frequently testified in oversight hearings regarding the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs. From 1976 to 1984, its Federal Education Project focused substantial attention on civil rights enforcement in education, by the Department of Health, Education & Welfare, and then by the Department of Education.

The Lawyers' Committee thus is intimately familiar with how federal antidiscrimination law was construed, and how the administrative enforcement process functioned, prior to the Grove City decision. Indeed, the Committee recognized that the position advanced by Grove City College would seriously impair, if not destroy, the efficacy of Title IX of the Education Amendments of 1972 and would have grave consequences for the scope of other antidiscrimination measures, including Title VI of the 1964 Civil Rights-

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[5] See 28 C.F.R. §§ 42.401 et seq.

[6] See National Black Police Association v. Velde, 631 F.2d 784 (D.C. Cir. 1980), vacated and remanded, 458 U.S. 591 (1982), on remand, 712 F.2d 569 (D.C. Cir. 1983), cert. denied, 80 L. Ed. 2d 562 (1984).

Act. For this reason, we submitted a brief amicus curiae in the Supreme Court, arguing that students' use of Basic Educational Opportunity Grant (BEOG) funds to pay tuition and expenses made Grove City College a "recipient" of "Federal financial assistance" and thus subject to the requirements of Title IX; and further, that Title IX prohibited discrimination in any part of Grove City's institutional activities. While the Court's majority agreed with our first contention, it adopted -- erroneously, in our view -- an exceedingly narrow view of what Title IX and other federal anti-discrimination laws require, which has made necessary the measure which your Committees are considering.

The Grove City Ruling

The question before the Supreme Court in the Grove City case was whether the fact that the college's students financed their educations in part through BEOG Grants[7] made the school a recipient of Federal financial aid subject to the nondiscrimination requirements of Title IX. On this issue, we think the Court properly took a realistic view:

> The structure of the Education Amendments of 1972, in which Congress both created the BEOG program and imposed Title IX's nondiscrimination requirement, strongly suggests [coverage]. . . . In view of this connection and Congress' express recognition of discrimination in the administration of student financial aid programs, it would indeed be anomalous to discover that one of the primary components of Congress' comprehensive "package of federal

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[7] These grants are now known as "Pell grants."

> aid," . . . was not intended to trigger coverage under Title IX.[8]

In further support of its conclusion, the majority opinion noted, inter alia, that Congress was well aware in 1972 "that the student assistance programs established by the amendments would significantly aid colleges and universities";[9] that BEOGs were easily distinguishable from "food stamps, Social Security benefits, welfare payments, and other forms of general-purpose governmental assistance to low-income families" because (a) Congress did not "inten[d] the receipt of federal money in this manner to trigger coverage under Title IX," (b) "these general assistance programs, unlike student aid programs, were not designed to assist colleges and universities," (c) the schools may have no knowledge and certainly have no control over whether they receive such general assistance monies whereas their willing participation -- which they may withhold -- is necessary if their students are to receive BEOG grants, and (d) "individuals' eligibility for general assistance is not tied to attendance at an educational institution"[10]; and that Title IX was closely patterned upon Title VI, whose "drafters . . . envisioned that the receipt of student aid funds would trigger coverage."[11] Finally, the Court observed that its conclusions were strongly supported by post-enactment legislative developments, including both the failure of the Congress to disapprove Title IX regulations defining coverage broadly and its rejection of proposed amendments which would have limited coverage to institutions which "directly" receive federal aid.[12]

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[8] 79 L. Ed. 2d at 525-26 (citations & footnote omitted).

[9] Id. at 527 & n.14 (footnote omitted).

[10] Id. at 527 n.13.

[11] Id. & n.15.

Unfortunately, these same indicators of Congressional intent were ignored by the Court's majority when it considered the second issue which it felt it necessary to decide in the case: the scope of Title IX's prohibition against discrimination by a college or university receiving federal funds. In holding that Title IX merely requires that Grove City College not discriminate in its administration of student financial aid programs, the majority reached a result which we think would astonish the Congresses which enacted Title VI and Title IX every bit as much as a decision that Grove City's receipt of BEOG funds did not subject it to Title IX coverage at all! For the effect of the Court's narrow reading of the words "program or activity" in Section 901 is that a school whose students receive BEOG grants may subject women to any and all kinds of unequal treatment based upon their sex _except_ that _if_ it admits them as students, it may not discriminate against them in the award of financial aid. This result trivializes the great purposes of Title IX and other federal antidiscrimination laws.

The drafters of Title IX understood that the student aid programs which they fashioned in the Education Amendments of 1972 would assist institutions, and not just students; although the Supreme Court relied upon this fact in holding that Grove City College was subject to Title IX, the Court ignored it in determining the scope of coverage. When the principal sponsor of Title IX, Senator Bayh, was asked whether the language, "any program or activity," would reach "dormitory facilities . . . athletic facilities . . . or . . . just educational requirements," he responded that "[w]hat we are trying to do is provide equal access for women and men students to the educational process _and_ the extra-curricular activities in a school . . . ."[13]

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[12] _Id._ at 528-29 & nn.18, 19.

Moreover, the post-enactment history of Title IX is equally significant with respect to how broadly the statute prohibits discriminatory conduct by educational entities. As amended by successive Congresses, Title IX includes, in Section 901(a), a series of specific exclusions from coverage. Many of these exemptions relate to events or functions which are very unlikely ever to receive earmarked federal support; for example, social fraternities or sororities, and beauty pageant scholarships. Unless Congress contemplated that the scope of Section 901 would be institution-wide, there would be no reason to have enacted these exclusions.[14] Further, in 1974, the Congress had directed the Secretary of Health, Education and Welfare to

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[13] 117 Cong. Rec. 30407 (1971)(emphasis added).

[14] _See_ _Haffer v. Temple University_, 524 F. Supp. 531, 541 (E.D. Pa.), _aff'd_, 688 F.2d 14 (3d Cir. 1982).

> publish, not later than 30 days after the date of enactment of [P.L. 93-380], proposed regulations implementing the provisions of title IX of the Education Amendments of 1972 relating to the prohibition of sex discrimination in federally assisted education programs *which shall include with respect to intercollegiate athletic activities reasonable provisions considering the nature of particular sports*.[15]

To the best of our knowledge, no federal funds have ever been appropriated to support intercollegiate athletics. Thus, the Supreme Court's interpretation in *Grove City*, that the Secretary lacked power to issue regulations in this area unless intercollegiate athletic programs at a school receive direct federal support, flies in the face of the obvious intentions of the Congresses which enacted and fine tuned Title IX. Finally, successive Congresses also *defeated* proposals to amend the statutory language so as to exclude from Title IX coverage similar, non-federally funded activities, such as "revenue producing" intercollegiate athletics,[16] any programs not receiving direct federal aid,[17] or programs other than those required for graduation.[18] Senator Bayh successfully opposed these amendments on the ground that they would have exempted "areas of traditional discrimination against women that are the reason for the . . . enactment of Title IX [including] . . . scholarship

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[15] Pub. L. No. 93-380, § 844, 88 Stat. 484, 612, *reprinted in* 1974 U.S. Code Cong. & Ad. News 541, 695 (emphasis added).

[16] *See* 120 Cong. Rec. 15322 (1974)(amendment proposed by Sen. Tower).

[17] *See* 121 Cong. Rec. 23845 (1975)(amendment proposed by Sen. Helms).

[18] *See* 122 Cong. Rec. 28136 (1976)(amendment proposed by Sen. McClure).

. . . employment . . . and extra-curriculum [sic] activities such as athletics."[19]

Federal agency regulations under Title VI, Title IX, Section 504 or the Age Discrimination Act never articulated the narrow theory of coverage adopted by the Supreme Court. In fact, Grove City College's argument was that there was no "program or activity" at the school which could be said to receive federal support, and prior to the time the case reached the Supreme Court, the government never advanced the contention that the only such "program or activity" was the financial aid office.[20] Although the exact language of regulations varied from one agency to another, and although regulations were, of necessity, framed in general terms, in their enforcement activities federal Departments consistently took a broad approach.[21] This broad reading of the statutes was not seriously disputed until recently.[22]

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[19] 122 Cong. Rec. at 28144.

[20] Prior to the current administration, the Department of Justice had consistently favored a broad interpretation of coverage different from its position in Grove City. See, e.g., letter from Special Assistant to the Attorney General for Title VI to the General Counsel, Veterans' Administration, March 5, 1968, at 2, quoted in U.S. Commission on Civil Rights, Federal Civil Rights Enforcement Effort (1971) 186:

> However, under the assistance provisions encompassed by the veterans educational aid statutes payment, although directly made to the beneficiary, is expressly conditioned upon his pursuit of an approved educational institution. . . . Thus, payments are specifically tied to the beneficiary's participation in an educational program or activity, which is thereby assisted through the availability of federal funds.

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[21] For one example, shortly after Title VI was passed, the Department of Health, Education & Welfare undertook a nationwide compliance effort with respect to hospitals. Guidelines for hospitals and nursing home facilities issued in 1964 and reissued in 1969 by the Department required the elimination of discriminatory practices throughout all the operations of a recipient, without seeking to trace federal funds.

[22] See, e.g., Bossier Parish School Board v. Lemon, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967); United States v. Jefferson County Board of Education, 372 F.2d 836 (1966), aff'd en banc, 380 F.2d 385 (5th Cir.), cert. denied sub nom. Caddo Parish School Board v. United States, 389 U.S. 840 (1967). In Board of Public Instruction v. Finch, 414 F.2d 1068 (5th Cir. 1969), the Court viewed Title VI as authorizing termination of less than all federal funds going to a school system still operating on a segregated basis, suggesting that funds for supplementary education centers might not be within the phrase "program or activity" in section 602. Two aspects of the case are important to bear in mind. First, the Fifth Circuit did not suggest that section 601 was so limited. Indeed, Senator Case had emphasized, when the 1964 Civil Rights Act was debated, that "the words and provisions of section 601 and the substantive rights established and stated in that section are not limited by the limiting words of section 602." 110 Cong. Rec. 5254 (1964). Second, because the Court of Appeals also recognized that even the supplemental facilities' operations could well be infected by the pervasive discriminatory environment within the school system, Taylor County had no drastic practical impact on the agency.

In the late 1970's HEW's regulatory authority under Title IX was challenged, with respect to coverage of employment practices, on the basis of a "program or activity" theory. E.g., Romeo Community Schools v. HEW, 600 F.2d 581, 584 (6th Cir.), cert. denied, 444 U.S. 972 (1979). However, these decisions were disapproved by the Supreme Court in North Haven Board of Education v. Bell, 456 U.S. 512 (1982). Contrary to the testimony of Assistant Attorney General Reynolds, the Supreme Court in North Haven did not "hol[d] that the coverage and fund termination provisions of Title IX are coterminous." Instead, the Court merely recognized that there were program-specific limitations in each section -- without deciding the content of those limitations in either place: "We conclude, then, that an agency's authority under Title IX both to promulgate regulations and to terminate funds is subject to the program-specific limitation of §§ 901 and 902." Id. at 538. "So read, the regulations conform with the limitations Congress enacted

[footnote continued on next page]

The Impact of the Grove City Ruling

If the Court's Grove City decision were merely a ruling in a private controversy with no systemic consequences, the Lawyers' Committee would not be appearing before you to urge legislative correction. However, the effect of the decision is to narrow drastically the protections against invidious discrimination which are available to racial and ethnic minority citizens, to women, to the disabled, and to the aged -- and to limit those protections not just in the educational arena, but throughout the range of institutions and activities in contemporary America which are affected by federal grant and other assistance programs. Since Grove City was decided, federal agencies have closed or modified pending enforcement proceedings in light of the narrow Grove City interpretation of federal antidiscrimination law, leaving the victims of discrimination without protection. The Department of Education alone has closed, suspended or refused to proceed in more than 60 cases involving allegations of race, sex and handicap discrimination in federally supported institutions where it had not been established that the federal assistance is traceable to the particular component of the institution in which the discrimination was alleged to have occurred.

[footnote continued from previous page]

in §§ 901 and 902. . . . [W]e do not undertake to define 'program' in this opinion." Id. at 539, 540. See also the remarks of Senator Case, quoted in the preceding paragraph.

I am sure that your Committees have been presented with documentation of this process, but it is worth repeating the description of some of the events here because they graphically demonstrate the effects of the Supreme Court's ruling.

-- The Office for Civil Rights (OCR) in the Department of Education received a complaint that a proprietary beauticians' training school, enrolling students who received federal grants or loans, assigned Black students to Black clients only, gave Black students but not white students janitorial duties, etc. After Grove City, the case was closed without investigation for lack of jurisdiction. It is difficult to imagine a case involving allegations of discriminatory practices more typical of those which Congress sought to reach through Title VI.

-- Little more than a week after the Supreme Court announced its decision, the Department of Education discontinued enforcement efforts to eliminate sex discrimination in a major state university's intercollegiate athletics program. OCR had made initial determinations of probable discrimination but the case was dropped after Grove City despite Congress' 1974 explicit direction to the agency to regulate in the area of intercollegiate sports. Since that time, the Department of Education has dropped a number of other cases involving allegations of sex discrimination in intercollegiate athletic programs.

-- OCR decided it could not investigate a complaint that a correctional officer had been fired because of his disability, since the former officer had not been employed in education programs funded under the Education of All Handicapped Children Act or the Vocational Education Act at the correctional facility.

-- OCR is delaying an investigation into an employment discrimination complaint by an instructor at a large technology institute while it tries to determine whether any of the federal funds (totalling almost $ 250,000 in 1983 and 1984) received by the school went to the department in which the complainant worked.

-- An Administrative Law Judge has ruled that Title IX does not prohibit sex-segregated physical education classes unless a school district receives federal funds that are earmarked for physical education in-

> struction, a result totally at odds with the expectations expressed by Senator Bayh and others when Title IX was enacted.

These are typical examples of how the administrative remedy against discrimination which Congress sought to fashion in Title VI, Title IX, Section 504 and the Age Discrimination Act is being diluted and destroyed. The efforts of already overburdened enforcement personnel have been diverted to the task of mapping the path of Federal financial assistance. Instead of providing what President Kennedy described in 1963 as "[s]imple justice" -- an accessible mechanism to insure "that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, subsidizes, or results in racial discrimination,"[23] federal anti-discrimination laws have been distorted by the Grove City decision into complex and ineffective schemes that dash hopes for equality of opportunity. The administrative remedies crafted by the Congress now are, at best, burdened heavily by the necessity of tracing federal dollars[24] within institutions, school systems, or other entities, or at worst, rendered irrelevant.[25] Indeed, it would appear that under the Court's approach in Grove City, the Veterans' Administration would be required to make tuition grants to otherwise eligible white veterans choosing to attend a school which excludes Blacks, since that discrimination would occur within the school's Admissions Office and not its financial aid program.[26]

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[23] Message to Congress of June 19, 1963, 109 Cong. Rec. 10552 (1963), reprinted in 1963 U.S. Code Cong. & Ad. News 1526, 1534; see also 110 Cong. Rec. 6543 (1964)(Sen. Hubert H. Humphrey).

[24] See 130 Cong. Rec. H 7018 (daily ed., June 26, 1984)(Rep. Perkins, quoting letter from Congressional Budget Office: "To monitor adherence to nondiscrimination policies under current law [in light of Grove City], the federal, state, and local governments would have to increase their administrative efforts and accounting capabilities to trace the flow of Federal financial assistance to individual programs and activities").

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[25] In his memorandum to the Secretary of Education recommending that University of Richmond v. Bell, 543 F. Supp. 321 (E.D. Va. 1982), be appealed, [then Acting] Assistant Secretary for Civil Rights Harry M. Singleton said:

> If universally accepted, the opinion would (1) halt all protection against discrimination in curricular and extracurricular athletics at all educational levels; (2) nullify all civil rights responsibilities deriving from the broadest forms of aid to education (including, it would appear, impact aid to school districts as well as campus-based student aid in colleges and universities); (3) allow recipients to insulate pockets of discrimination by the way they structure their applications for assistance; (4) preclude OCR from adequately investigating discrimination in a student aid office where the student aid office is acting on the instructions of the athletic department; (5) preclude investigations in other cases where discrimination originating in one part of a school causes discrimination in another part; (6) preclude OCR even from gathering information about the structure and funding pattern of a recipient; and (7) require OCR to be ready to make a factual presentation to a court before it makes initial contact with a recipient.

Memorandum from Harry M. Singleton to The Secretary, August 19, 1982, at 2. Assistant Attorney General W. Bradford Reynolds rejected the request to appeal the ruling.

Grove City's impact on non-educational entities is similar to that described by Assistant Secretary Singleton. See, e.g., United States v. Baylor University Medical Center, 736 F.2d 1039, 1049-50 (5th Cir. 1984)(investigation of discrimination in emergency room and in-patient care was appropriately "program-specific" where hospital received Medicare and Medicaid reimbursements for emergency and in-patient services). The reasoning in the Baylor opinion suggests that a medical facility could structure its services in such a fashion as to insulate some discriminatory practices from scrutiny even though the institution as a whole may be heavily dependent upon federal grant and reimbursement programs for its fiscal health.

But the effects of the Grove City ruling extend far beyond the administrative process. The artificial conception of Title IX's ban on sex discrimination which the Court announced will also restrict the remedies available to victims of discrimination who bring court actions under the statute, which were recognized in the Cannon case.[27] Thus, for example, a lawsuit challenging inequalities in intercollegiate athletic opportunities available to male and female students at a public university[28] would, after Grove City, have to be dismissed unless it could be demonstrated that federal funds were used in the athletic program of the school.[29] These twin effects: crippling of administrative enforcement of federal antidiscrimination laws and the severe curtailment of private suits under those laws, warrant Congressional intervention to restore the broad protections against discriminatory conduct by recipients of federal funding which was intended to be provided by Title IX.

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[26] See Stewart v. New York University, 430 F. Supp. 1305, 1314 (S.D.N.Y. 1976); compare Bob Jones University v. Johnson, 396 F. Supp. 597 (D.S.C. 1974), aff'd 529 F.2d 514 (4th Cir. 1975). We must note with dismay that the U.S. Civil Rights Commission recently called for legislation which would overrule the first part of the Supreme Court's Grove City ruling so that "a college which deliberately foregoes federal aid to avoid federal edicts should not be federalized [sic] as a result of enrolling students who have themselves received federal student aid." March 5, 1985 Commission Statement on Grove City, at 6. Under this approach, Bob Jones University, which is ineligible for federal tax-exempt status because of racially discriminatory policies, would receive BEOG or VA funds.

[27] Cannon v. University of Chicago, 441 U.S. 677 (1979). See also Consolidated Rail Corporation v. Darrone, 79 L. Ed. 2d 568, 574 n.7 (1984).

[28] See Haffer v. Temple University, 524 F. Supp. 531 (E.D. Pa. 1982).

[29] See id. at 540 (alternative holding).

As I have described, however, the damage wrought by the Grove City ruling is not limited to Title IX. The Supreme Court recognized that Title IX was patterned after Title VI, and it discussed the legislative history of both statutes in its opinion, as did the dissent,[30] suggesting that at least these two laws will be similarly construed. Furthermore, in a companion case -- involving a non-educational institution -- the Court intimated that the Grove City analysis would govern interpretation of the phrase "program or activity" which appears in Section 504 of the Rehabilitation Act.[31] Thus, while the Court has not yet had occasion to spell out explicitly the full implications of its Grove City approach to the interpretation of federal antidiscrimination law, it has made it quite clear that the effects of Grove City will be felt beyond education and beyond Title IX.

As I have indicated, the Department of Education has already begun to close or defer investigations not only involving claims of sex discrimination prohibited by Title IX, but also those raising claims of discrimination on the basis of handicap in violation of Section 504, or racial discrimination contrary to Title VI. Similarly, it would appear that after Grove City, suits on behalf of students claiming that their participation in extracurricular activities was curtailed,[32] or by teachers averring that they were discharged,[33] because of their handicaps could not be maintained absent a demonstration that federal funds subsidized the extracurricular programs or the teaching slot in question. Cases involving claims of ethnic discrimination in a non-federally funded college program operated by a Department and institution receiving substantial Federal financial assistance[34] would likewise be barred.

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[30] See 79 L. Ed. 2d at 516 & n.15 (majority opinion); id. at 538-48 (dissenting opinion).

[31] Consolidated Rail Corporation v. Darrone, 79 L. Ed. 2d 568, 578 (1984).

Indeed, Grove City creates doubt even about the Supreme Court's previous ruling that public school students who are unable to understand the language of instruction may obtain redress from a federal court. For in its 1974 ruling in Lau v. Nichols,[35] the Court made no reference to any finding that the Chinese-speaking plaintiffs in that case had been denied admittance to a special "program or activity" supported with federal funds. The uses to which federal monies were put were not identified by the Supreme

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[32] See Wright v. Columbia University, 520 F. Supp. 789 (E.D. Pa. 1981); Poole v. South Plainfield Board of Education, 490 F. Supp. 948 (D.N.J. 1980).

[33] See Pittsburgh Federation of Teachers v. Langer, 546 F. Supp. 434 (W.D. Pa. 1982); see also 130 Cong. Rec. H 6804 (daily ed., June 25, 1984)(remarks of Rep. Murphy).

[34] See Yakin v. University of Illinois, 508 F. Supp. 848, 850 (N.D. Ill. 1981).

[35] 414 U.S. 563 (1974).

Court, which observed only that the San Francisco Unified School District "receive[d] large amounts of federal financial assistance."[38] The Court held that English-only classes denied the Title VI rights of the plaintiffs by limiting their access to the overall educational program of the school system, in language very different from that used in the Grove City decision.[39]

In all of these cases, there will be no adjudication, no fact-finding. Suits will be foreclosed whether or not the allegations are true, in spite of the fact that in each instance the alleged discriminatory practices are directly contrary to well-established national policy embodied in federal legislation, and that the Congress has repeatedly sought to accomplish their elimination. By closing off the administrative and judicial processes to valid charges, Grove City thus directly impedes the realization of the national goal of equal opportunity.

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[38] Id.

[39] The court concluded:

> It seems obvious that the Chinese-speaking minority receives fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program -- all earmarks of the discrimination banned by the regulations.

Id. at 568 (emphasis added & footnote omitted). See also id. at 570 (Stewart, J., concurring in the result) (quoting HEW interpretive guideline requiring a school system receiving federal funds to insure "effective participation in the educational program offered by a school district" by taking "affirmative steps to . . . open its instructional program" to non-English speakers (emphasis added)).

It would appear, after Grove City, that this analysis is insufficient and that Title VI would require only that specific program offerings supported by federal funds be made accessible to limited-English-speaking children without discrimination. Cf. 130 Cong. Rec. H 6804-05 (daily ed., June 25, 1984)(remarks of Rep. Murphy)(handicapped students).

For the reasons I have given, the Lawyers' Committee cannot agree with those who have suggested that remedial legislation in response to the ruling should be limited only to Title IX or only to educational institutions. A bill so limited would fail to neutralize all of the disturbing effects of Grove City, and it would promise years of additional litigation over the precise scope of coverage while discriminatory practices go unremedied.

Broad, Institution-Wide Coverage is Necessary

The Lawyers' Committee also submits that the requirement of nondiscrimination on the basis of race, national origin, sex, handicap or age should apply broadly to institutions or entities which are recipients of Federal financial assistance -- as would be provided by H.R. 700. Narrow definitions of coverage, whether they utilize the approach of the Grove City majority or that of the administration's bill (with respect to educational institutions) unavoidably place a governmental *imprimatur* upon continued discrimination by limiting the obligation to eliminate it which is tied to the receipt of federal assistance. Since there is no disagreement about the goal of eradicating such discrimination, there is no adequate justification for compelling federal enforcement agencies to expend enormous resources in order to determine whether or not a claim that discrimination has been practiced by an admitted recipient of federal assistance can be investigated and redressed.

We urge your Committees to reject alternatives to H.R. 700 which do not provide for broad coverage and enforcement. First, we condemn the suggestion of the Civil Rights Commission[40] that the Congress should seek to overrule Grove City's holding that BEOG's and other forms of indirect aid which are provided to institutions[41] are "Federal financial assistance" within the meaning of these laws. As I have previously observed, Congress contemplated, when it enacted the BEOG statute, that institutions of higher learning would benefit from the grants, which are explicitly tied to the institutions' charges for their educational offerings to students.[42] Indeed, today such forms of assistance probably constitute the predominant means of federal support for higher education.[43] In light of this fact, limiting the reach of the

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[40] See supra note 28.

[41] Grove City, of course, involved an educational institution. The same principles apply, however, to non-educational entities. See, e.g., United States v. Baylor University Medical Center, supra note 27 (holding Medicare and Medicaid payments are "Federal financial assistance" within the meaning of Section 504).

[42] See 20 U.S.C. §§ 1070(a), 1070(a)(1)(B). See also H.R. Rep. No. 2157, 85th Cong., 2d Sess. (1958), reprinted in 1958 U.S. Cong. & Ad. News 4731, 4738 (federal contributions to student loan funds established and administered by colleges but not commingled with schools' general revenues would nevertheless "materially assist institutions of higher education to retain their more competent students who need financial assistance in order to continue their studies").

[43] Cf. H.R. Rep. No. 92-554, 92d Cong., 1st Sess. (1971), reprinted in 1972 U.S. Code Cong. & Ad. News 2462, 2584 (Supplemental

[footnote continued on next page]

laws covered by H.R. 700 only to schools which seek *other* forms of federal assistance would amount to a declaration that the Congress is indifferent to the occurrence of discrimination against students to whom it has made available BEOG aid. This would indeed be a sorry civics lesson for the youth of our country.

We believe that the administration's approach, which Mr. Reynolds endorsed when he testified before you on March 7, is wholly inadequate, even as to its treatment of educational institutions. There can be no reasoned justification for varying the extent of protection against invidious discrimination among colleges or university systems which receive federal aid, based upon their internal administrative structures.[44] Certainly the benefits of federal assistance are not so confined. Budgets are constructed and implemented on an integrated, school- or system-wide basis. While declining enrollments may sometimes lead to a reduction or termi-

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[footnote continued from previous page]

Views)("Federal dollars now constitute over 20% of the total budget of our higher education system. Most of these dollars flow to institutions through research contracts, student assistance programs, and categorical programs . . .").

[44] The measure supported by Mr. Reynolds defines the term "program or activity," as applied to educational institutions, to "mean the educational institution." Only Title IX contains a definition of the latter term, but it is a restrictive one which Mr. Reynolds recommends:

> . . . in the case of an educational institution composed of more than one school, college or department which are administratively separate units, such term means each such school, college or department.

20 U.S.C. § 1681(c).

nation of certain course offerings, no college, university system or other corporate entity of which we are aware rigidly compartmentalizes its fiscal processes according to its academic or functional structure. For example, the operation of some schools or departments may be sources of net revenue for the institution or system of institutions. When these schools or departments receive federal aid, whether through research grants or BEOG awards to students who are enrolled in them, federal funds contribute directly to the overall financial soundness of the institution or system. For this reason alone, the obligation to avoid discrimination must extend to all parts of the entity.[45]

Objections to the Legislation

I would like to close my remarks by referring briefly to some of the objections to this legislation which have been raised.

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[45] As one court recently noted,

> Title VI binds the service provider, or "recipient," thus it affords a remedy against discrimination by recipients to all participants in a federally funded program,[9] not merely to the individual beneficiaries of the federal aid[10] -- since eligibility for a specific type of aid is determined by criteria unrelated to the discrimination Congress sought to prevent.
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> [9] Title VI requires that "the public bodies or private entities receiving the benefits of any such loan refrain from racial discrimination." 110 Cong. Rec. 6545 (1964)(comments of Sen. Humphrey).

(emphasis in original; footnote 10 omitted.)

I have already adverted to Mr. Reynolds' description of the measure as increasing federal government intrusion into private affairs. It is difficult to credit this assertion. H.R. 700 does not alter the statutory language, "recipient of Federal financial assistance," nor prescribe any changes in existing regulatory or judicial definitions of that term. It merely provides a definition of the "program[s] or activit[ies]" of such "recipients" as to which invidious discrimination is prohibited. To the extent, therefore, that a small grocery store accepting food stamps would be a "recipient of Federal financial assistance" within the meaning of Title VI, Title IX, Section 504 or the Age Discrimination Act, which we do not believe to be the case, that result flows from statutory language unaffected by H.R. 700 and from pre-Grove City interpretations of the law which are not changed either by that decision or by the bill.[46]

For the same reason, nothing in this bill would alter the current regulatory provisions which exclude the ultimate beneficiaries of assistance from the definitions of "recipient." We think Mr. Reynolds is plain wrong in his concerns about farmers who receive federal price supports. Nothing in H.R. 700 affects the criteria or language by which federal agencies have determined that price support payments to a farmer are not "Federal financial assistance" within the meaning of Title VI, Title IX, Section 504 or the Age Discrimination Act.[47]

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[46] We note that Justice White took pains in the Court's opinion in Grove City to distinguish student financial assistance from, *inter alia*, Food Stamps. *See* 79 L. Ed. 2d at 527 n.13. Of course, that discussion is *dictum* but it does indicate the direction of the Court's thinking.

As to Mr. Reynolds' talismanic invocation of the concept of a "limited federal government role" and his references to state and private responsibilities, it is important to note that the statutes amended by H.R. 700 are concerned only with the prohibition of discriminatory conduct, an area which has been recognized as a particularly proper federal concern since passage of the Thirteenth and Fourteenth Amendments.[48]

A great deal of discussion has occurred, both last year and this year, about whether or not H.R. 5490 or H.R. 700 may be properly characterized as "restoring the pre-Grove City construction" of the four antidiscrimination laws which the bill would affect. Earlier in my testimony, I sketched briefly the broad interpretation of coverage under these laws which was common among federal agencies and courts until quite recently. On this basis, we believe that H.R. 700 does in fact seek to restore the general approach which prevailed before the Grove City ruling. While opponents have pointed to a handful of lower federal court rulings in the past several years which anticipated Grove City's narrow approach to the construction of the term "program or activity," as an indication that this legislation goes beyond a restoration of the *status quo ante*, we would suggest that the predominating agency interpretations and judicial rulings prior to 1984 were in favor of wide, not narrow, coverage. But even if we thought that in some respects the bill which you are considering went beyond established pre-Grove City law, we would still support its enactment because of the overriding importance of affording all persons adequate protections against invidious discrimination.[49]

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[47] As the court noted in Bob Jones University v. Johnson, 396 F. Supp. 597, 601 n.15 (D.S.C. 1974), aff'd, 529 F.2d 514 (4th Cir. 1975):

> A "recipient" within the meaning of Title VI is not to be confused with the "beneficiary" of federal assistance. The recipient is the intermediary entity whose nondiscriminatory participation in the federally assisted program is essential to the provision of benefits to the identified class which the federal statute is designed to serve. . . . The requirements of Title VI cover recipients but not beneficiaries.

[48] See, e.g., Jones v. Alfred H. Mayer Co., 392 U.S. 409, 437-44 (1968).

During last year's consideration of H.R. 5490, Senator Hatch asserted that passage of the legislation would impose affirmative action obligations upon thousands of American businesses, agencies and individuals. That was not true of H.R. 5490 and it is not true of H.R. 700 this year. No agency regulations under either Title VI, Title IX, Section 504 or the Age Discrimination Act, so far as we have been able to ascertain, require affirmative action of any recipient, although voluntary affirmative action by recipients is not proscribed. Recipients are mandated to take actions which consciously consider race, sex, national origin, handicap status or age only when necessary to remedy discrimination which has been found through appropriate agency investigative and adjudicatory procedures (subject to ultimate judicial review).

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[49] As Representative Ford put it last year:

> I do not quarrel with the accuracy of the [Grove City] decision. The court had a judgement to exercise. It is a matter of "Monday morning quarterbacking" the intentions of the legislators who put the law together in the first place. What is essential now is that we have the language that expresses precisely what we mean and that firmly keeps in place enforcement procedures which have worked so well nailed down so that we do not leave open the possibility of future arguments before the Court that could lead to interpretations similar to Grove City College.

130 Cong. Rec. H 6817 (daily ed., June 24, 1985)(emphasis added).

Some questions have also been raised about the impact of this measure upon organizations which receive no federal grants and do not benefit from federal student assistance, but which do have federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. The short answer to these inquiries is that tax exemption will not subject an organization or entity to the requirements of Title VI, Title IX, Section 504 or the Age Discrimination Act. Tax exemption has been specifically rejected as a basis for triggering coverage under these statutes,[50] and with a single, isolated exception, no court has ever suggested otherwise. The absence of any precedential basis for treating tax-exempt status as "Federal financial assistance" under these statutes was fully discussed by the Lawyers' Committee last year in response to a request from Representative Edwards, and a copy of that correspondence is attached to this testimony.

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[50] Bachman v. American Society of Clinical Pathologists, 577 F. Supp. 1257, 1263 (D.N.J. 1983).

Finally, as lawyers, we were surprised by Assistant Attorney General Reynolds' suggestion that H.R. 700 could somehow be construed to extend Title IX's prohibition of sex discrimination beyond "educational" programs or activities. Since the word "education" will remain in the statute, immediately preceding and modifying the newly defined term "program or activity," we see no defensible basis whatsoever for reading the "proposed new language . . . as deleting the modifier 'education,'" as Mr. Reynolds testified might be the case.

Conclusion

The Lawyers' Committee strongly urges passage of this important legislation without delay. I will be happy to respond to any questions from Members of the Committees.

Mr. **Edwards**. Thank you, Mr. Kapp.

The next member of the panel to testify is Father Bryan Hehir. Father Hehir is Secretary for the Department of Social Development and World Peace.

TESTIMONY OF REV. BRYAN HEHIR

Reverend **Hehir**. Mr. Chairman and members of the committee, I testify today on behalf of the U.S. Catholic Conference. The U.S. Catholic Conference is the public policy agency of the Catholic bishops of the United States. And, Mr. Chairman, I would like to note that I am accompanied by a member from the general counsel's office of the conference. I am not a lawyer and this legislation gets a little intricate as we get into it.

I wish at the outset to express the appreciation of the bishops for this opportunity to present their views on an issue of fundamental importance for American society, overcoming discrimination based on age, race, sex, or handicap. It is the position of the Catholic bishops that the protection and promotion of civil rights is a fundamental test of the justice of our society, and of fidelity to our own constitutional tradition.

How we respect the basic civil rights of each person is not only a political, but the bishops would affirm, a moral question of the highest importance. Religious organizations were a major element in the civil rights history of the 1960's and I express the basic posture of the Catholic bishops when I say that we testify on H.R. 700 today because we want the Catholic Church to be a significant voice and a responsible institution in protecting and promoting civil rights in the 1980's and the 1990's.

I am here today to reaffirm the strong support of the Catholic bishops of the United States for strong and effective civil rights legislation.

The prevention of discrimination was a moral issue in the 1960's. It is a moral issue today. The need to protect basic civil rights required the passage of strong legislation in the 1960's. Today those laws must be preserved and enhanced if the gains we have made are not to be eroded.

In the past two decades, there have been several major strides in the fight against discrimination. Despite the gains that have been made, however, discrimination continues to be a serious problem in our society. Racial, sexual, and other forms of discrimination are frequently less blatant and overt than they used to be, but the new more subtle forms of discrimination are no less harmful to human dignity and human progress.

One of most effective ways to reduce unjust discrimination is to use the power of the Federal Government to enforce a very basic principle. Namely, that those institutions which receive Federal funds ought not to discriminate.

The four statutes which are embodied in H.R. 700, and have been in place over the last several years, have been used to enforce this principle. As a result, these laws have been partially responsible for bringing about fundamental changes of enormous importance. That important progress must not be allowed to be weakened or eroded.

The decision of the U.S. Supreme Court in *Grove City* v. *Bell* threatens the effectiveness of the four civil rights statutes I have referred to. The effect of the *Grove City* decision allows the possibility for institutions receiving Federal funds to practice discrimination. The U.S. Catholic Conference finds this unacceptable and we support the objectives of H.R. 700 in seeking to guarantee that institutions receiving Federal assistance will uphold the civil rights standards of this Nation.

We support the policy and enforcement of title IX, title VI, section 504, and Age Discrimination Act. Hence, we support the objectives of H.R. 700 to clarify and strengthen the enforcement of these laws.

Mr. Chairman, the perspective of the bishops in supporting the objectives of this legislation are based on a series of moral principles and our concerns also extend to the implementation of the principles.

The basic moral principle that brings the bishops here is the notion that the dignity of the human person is the fundamental basis of Catholic teaching in anything it says in the social and political order. Each person reflects the image of God. Unjust discrimination attacks the image of God in our midst.

The way human dignity is protected in society is by surrounding persons with fundamental human rights, moral claims that each person can make and can expect others to respect, precisely because these human rights, and there are a range of them, are precisely the way in which human dignity is preserved.

Third, the bishops believe that the protection of human rights takes place only within a social setting. Therefore, the ordering of society by our laws is not simply a technical question, but a fundamental moral question. The way we structure our civil law has a great deal to do with whether human rights are protected and preserved.

Catholic teaching argues that every person has a responsibility to respect the civil and human rights of other persons, but the government has a special responsibility. Political authority, Catholic teaching asserts, has a unique moral and legal responsibility in protecting basic human rights. And, therefore, the quality of our civil law protecting human and civil rights is, for us, of the highest importance.

Now, having stated that, let me state some of the concerns of the bishops. The moral and legal principles which move the Catholic bishops to support civil rights legislation, also require us to raise a particular objection to the implications of one dimension of H.R. 700. The effect of extending coverage of title IX will inevitably mean the extension of regulations, finalized in 1975, which require that the termination of pregnancy be treated the same as other disabilities in student and employee health and benefit programs. Precisely because we are testifying in support of civil rights, the Catholic bishops want to reaffirm their opposition to including in any way the right to abortion as a civil right.

Moving from the level of moral principle to specific aspects of H.R. 700, the U.S. Catholic Conference wishes to raise the question of the religious tenet provision of title IX. The religious provision was included in title IX at the time of its enactment. It protects church institutions against conflicts between their religious beliefs and title IX. The Catholic Conference sees the religious tenet provision as an expression of the abiding American sensitivity to religious freedom, and it is for us a fundamental requirement in this legislation. We request that the tenet provision be extended to ensure that the noneducational institutions will also be protected. As we read H.R. 700 in its present form the religious tenet provision has not been written into the bill and this constitutes for the Catholic Conference a fundamental flaw in the legislation.

Finally, another crucially important, and these concerns on the religious tenet and the one I am mentioning, are spelled out in a memo of our general counsel which I would like to submit for the record, Mr. Chairman, along with my testimony.

Mr. **Edwards**. Without objection, it will be made a part of the record.

Reverend **Hehir**. This second concern, in addition to abortion and the religious tenet, is the question of how Catholic institutional structures would be affected by H.R. 700. Let me repeat, the Catholic Conference fully supports the principle that Federal financial assistance should not be used to support discrimination. It is reasonable to require institutions in their entirety to bear the responsibilities and obligations imposed by the four statutes as a condition of receiving Federal assistance.

Our concern is, that in pursuing this desirable result, H.R. 700 will sweep within the ambit of the four statutes institutions and subunits of churches which do not themselves receive any Federal financial assistance. For example, under H.R. 700 all of the activities of a diocese could be subject to coverage under the four statutes if any part of the diocese receives Federal assistance.

To give you an example of how this affects us, in the case of a diocese organized under the idea of a corporate sole structure, and some of our dioceses are, all of the parishes in the diocese, as well as other unincorporated agencies or departments of the diocese, are considered to be part of the larger single entity of the corporation sole.

Therefore, under H.R. 700, all of the parishes and other diocesan activities subsumed under the corporation sole would be subject to the four statutes if any parish or any activity of the corporation sole receives Federal assistance. Even in dioceses where separate incorporation is prevalent, as is the case in some of our dioceses, there is a real possibility that a diocese and its separately incorporated parishes, agencies, and institutions would be treated as a single entity within the meaning of H.R. 700 because of the civil control, the bishop of the diocese can exercise over the various corporation.

To avoid extending coverage to church institutions and agencies that receive no Federal assistance, we urge the committee to adopt appropriate amendatory language which will ensure that these institutions, which actually receive assistance are covered by the statute, but which will also recognize and respect the operational integrity of individual institutions and other subunits of churches which do not receive any Federal assistance.

As the general counsel's memo notes, we understand that in the bill as it is written, the operations of individual agencies and departments of State and local governments have been accommodated. We are confident that appropriate language can be fashioned which will similarly accommodate the legitimate concerns of churches.

Let me conclude. To summarize, we come before this committee to support its efforts to assure the equitable and vigorous enforcement of the civil rights statutes amended by H.R. 700. The bishops recognize the significance of this legislation and the moral and religious obligation of the church as to be a forceful advocate of civil rights within its own institutions and in society.

We are requesting that three changes be made in H.R. 700. One, an amendment to ensure that title IX will not be interpreted as requiring abortion coverage in student, employee, or other benefit programs. Two, an amendment to expand the religious tenet provision so that it corresponds to the full reach of title IX as that is envisioned in H.R. 700. Three, an amendment to recognize, as H.R. 700 presently does for State and local governments, that institutional coverage be confined to those units receiving Federal funds either directly or indirectly.

These changes would assure the Catholic Conference's total support for H.R. 700, a bill which we believe has many positive dimensions.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Father Hehir, and I assure you that both committees, the Judiciary and Education and Labor will examine your suggestions with great respect and will communicate with your organization and with Father Byron's also.

Reverend HEHIR. Thank you.

[The prepared statement of Rev. J. Bryan Hehir follows:]

PREPARED STATEMENT OF REV J. BRYAN HEHIR

I testify today on behalf of the U.S. Catholic Conference (USCC). The USCC is the public policy agency of the Catholic Bishops of the United States. I wish at the outset to express the appreciation of the bishops for this opportunity to present their views on an issue of fundamental importance for American society - overcoming discrimination based on age, race, sex or handicap.

In my testimony I propose to address briefly three themes: (1) the significance of the legislation embodied in H.R.700; (2) the basic principles and concerns which shape the USCC position on H.R.700; and (3) specific modifications which the USCC believes are needed in H.R.700.

I. The Significance of this Legislation

It is the position of the Catholic Bishops that the protection and promotion of civil rights is a fundamental test of the justice of our society, and of fidelity to our own constitutional tradition. How we respect the basic civil rights of each person is not only a political but also a moral question of the highest importance.

The history of the civil rights movement and the impact of the Civil Rights Act of 1964 tell the story of how this nation came to see the interdependence of the best of our constitutional tradition and imperatives of our religious traditions in the question of civil rights. Religious organizations were a major element in the civil rights history of the 1960s and I express the basic posture of the USCC when I say that we testify on H.R.700 today because we want the Catholic Church to be a significant voice and a responsible institution in protecting and promoting civil rights in the 1980s and 1990s. I am here to reaffirm the strong support of the Catholic

Bishops of the United States for strong and effective civil rights legislation. The prevention of discrimination was a moral issue in the 1960s. It is a moral issue today, as well. The need to protect basic civil rights required the passage of strong legislation in the 1960s. Today those laws must be preserved and enhanced if the gains that we have made are not to be eroded.

During the last two decades, our society has made important strides toward eradicating many forms of discrimination. To a significant degree it was the enactment and enforcement of civil rights laws that contributed to this success. It is a precious part of our heritage - a moral, social, and political achievement that must not be weakened or allowed to regress.

Despite the gains that have been made, however, discrimination continues to be a serious problem in our society. Radical, sexual and other forms of discrimination are frequently less blatant and overt than they used to be. But the new, more subtle forms of discrimination are no less harmful to human dignity and human progress. They are no less morally offensive to the God who created us equal. It is imperative, therefore, that our society maintain and strengthen its efforts to eradicate discrimination based on race, sex, age, or handicap.

One of the most effective ways to reduce unjust discrimination is to use the power of the federal government to enforce a very basic principle - namely, that those institutions which receive federal funds ought not to discriminate. Thus Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, have been used to enforce this principle. As a result, these laws have been partially responsible for bringing about fundamental changes of enormous importance. For example, schools have been desegregated, handicapped people are being brought into the mainstream of American life, and women are making important progress against the pervasive sexism that marks our national life. This important progress must not be allowed to be weakened or eroded.

The decision of the U.S. Supreme Court in Grove City v. Bell threatens the effectiveness of the four civil rights statutes referred to above. The effect of the Grove City decision allows the possibility for institutions receiving federal funds to practice discrimination. The USCC finds this unacceptable and we support the objectives of H.R.700 in seeking to guarantee that institutions receiving federal assistance will uphold the civil rights standards of this nation. We support the policy and enforcement of Title IX, Title VI, Section 504 and Age Discrimination Act. Hence we support the objectives of H.R.700 to clarify and strengthen enforcement of these laws.

II. Principles and Concerns of USCC Position

Our support for the objectives of H.R.700 is rooted in the basic moral teaching of Catholic faith. We also have some specific concerns about this legislation which flow from both our moral teaching and our specific institutional structure as a church.

1. The basic moral principle which supports all of Catholic social teaching and which is the core of our position in this testimony is respect for the dignity of the human person. Catholic teaching asserts that every person is created in the image of God.

Every person uniquely reflects the presence of God in the world. Unjust discrimination attacks the image of God in our midst.

2. Flowing from the dignity of the person is a spectrum of human rights through which human dignity is preserved and promoted in society. Authentic human rights are moral claims which each person can make because of his/her dignity. As the Catholic Bishops Pastoral Letter on Racism put it: "God's word in Genesis announces that all men and women are created in God's image; not just some races and racial types, but all bear the imprint of the Creator and are enlivened by the breath of his one spirit."

3. Precisely because our rights are denied or fulfilled in society, the moral claims of human rights must be translated into civil rights, i.e. rights protected by both the moral and the civil law. Catholic social teaching affirms the social nature of the person - we develop as fully human persons only within a social context. Therefore the political and legal order of a society is not a purely technical question but one of the highest moral significance. The importance of legislation for civil rights is that it touches upon the moral quality of a society. The responsibility to protect and promote civil rights rests upon each person and every institution in society, but Catholic teaching asserts that the civil authority of the state has unique moral and legal responsibilities in protecting basic human rights. These unique responsibilities are exercised through civil law.

4. The moral and legal principles which move the Catholic Bishops to support civil rights legislation also require us to raise

a particular objection to the implications of one dimension of H.R.700. The effect of extending coverage of Title IX will inevitably mean the extension of regulations, finalized in 1975, which require that termination of pregnancy be treated the same as other disabilities in student and employee health and benefit programs. (Cf. 45 CFR, Sec. 86.40 and 86.57.) Precisely because we are testifying in support of civil rights, the Catholic Bishops want to reaffirm their opposition to including in any way the right to abortion as a civil right. On the contrary it is necessary in this testimony to call attention to the fact that the right to life is the fundamental civil right and it applies to the unborn as well as to the rest of us.

5. Moving from the level of moral principle to specific aspects of H.R.700, the USCC must raise the question of the religious tenet provision of Title IX. The religious tenet provision was included in Title IX at the time of its enactment; it protects church educational institutions against conflicts between their religious beliefs and Title IX. The USCC's General Counsel, Mr. Caron, has prepared an extensive legal analysis of H.R.700 and it specifies our concern about the religious tenet provision. (I request that it be submitted for the record.)

The USCC sees the religious tenet provision as an expression of the abiding American sensitivity to religious freedom and it is for us a fundamental requirement in this legislation. We request that the religious tenet provision be extended to ensure that the noneducational institutions will also be protected. As we read H.R.700 in its present form the religious tenet provision has not been written into the bill and this constitutes for USCC a fundamental flaw in the legislation.

6. Another crucially important aspect of the legislation, also treated in our General Counsel's memorandum, is the nature of the Catholic institutional structure as it would be affected by H.R.700.

The USCC fully supports the principle that federal financial assistance should not be used to support discrimination. It is reasonable to require institutions in their entirety to bear the responsibilities and obligations imposed by the four statutes as a condition of receiving federal assistance. We are concerned, however, that in pursuing this desirable result H.R.700 will sweep within the ambit of the four statutes institutions and subunits of churches which do not themselves receive any federal financial assistance. For example, under H.R.700 all of the activities of a diocese could be subject to coverage under the four statutes if any part of the diocese receives federal assistance. To appreciate fully the potential expansive impact of H.R.700 on churches, one need only consider that in the case of larger dioceses as many as four hundred or more individual parishes, and a variety of other agencies and institutions, would be required to comply with statutory and regulatory provisions even though many of those parishes and institutions do not receive any federal assistance at all.

For example in the case of a diocese organized under a corporation sole structure, all of the parishes, as well as other unincorporated agencies or departments of the diocese, are considered to be part of the larger single entity, the corporation sole. Therefore, under H.R.700, all of the parishes and other diocesan activities subsumed under the corporation sole would be subject to the four statutes if any parish or other activity of the corporation sole receives federal assistance. Even in dioceses where separate incorporation is prevalent, as is the case in some dioceses, there is a real possibility that a diocese and its separately incorporated parishes, agencies, and institutions would be treated as a single "entity" within the meaning of H.R.700 because of the civil control the Ordinary (bishop) of the diocese can exercise over the separate corporations through his ex officio position as president, and his authority to appoint board members and to exercise veto authority in certain matters. Contributing further to this possibility is the authority of the Ordinary which exists under the canon law of the Church.

When considering diocesan structures it is important to bear in mind that parishes and other subunits of a diocese can exercise a significant degree of autonomy in their own operations, e.g., raising and use of operating funds, employment decisions, size and types of programs offered, and participation in state and federal programs. Thus, decisions of particular parishes or subunits of a diocese to receive federal assistance would trigger coverage for other parishes or subunits of the diocese which have elected not to participate in federal programs and receive no benefit from them.

To avoid extending coverage to church institutions and agencies that receive no federal assistance, we urge the Committee to adopt appropriate amendatory language which will ensure that those institutions which actually receive assistance are covered by the statutes, but which also will recognize and respect the operational integrity of individual institutions, parishes and other subordinate units of churches which do not receive any federal assistance. As discussed in the General Counsel's analysis, H.R.700 accommodates the operations of individual agencies and departments of state and local governments. We are confident that appropriate language can be fashioned which will similarly accommodate the legitimate concerns of churches.

III. Summary of the USCC Position

To summarize, the USCC comes before this Committee to support its efforts to assure the equitable and vigorous enforcement of the civil rights statutes amended by H.R.700. The bishops recognize the significance of this legislation and the moral and religious obligation the Church has to be a forceful advocate of civil rights within its own institutions and in society.

We are requesting that three changes be made in H.R.700:

1) an amendment to ensure that Title IX will not be interpreted as requiring abortion coverage in student, employee or other benefit programs;

2) an amendment to expand the religious tenet provision so that it corresponds to the full reach of Title IX as that is envisioned in H.R.700;

3) an amendment to recognize, as H.R.700 presently does for state and local governments, that institutional coverage be confined to those units receiving federal funds either directly or indirectly.

These changes would assure USCC's total support for H.R.700, a bill which we believe has many positive dimensions.

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Office of General Counsel

ANALYSIS
of
CIVIL RIGHTS RESTORATION ACT OF 1985 (H.R. 700)
and
CIVIL RIGHTS AMENDMENTS ACT OF 1985 (S.272)

February 26, 1985

On January 24, 1985 the Civil Rights Restoration Act of 1985 (H.R.700) ("House bill") was introduced in the House of Representatives.[1] On the same day, Senator Dole introduced the Civil Rights Amendments Act of 1985 (S.272) ("Dole bill"). Each bill seeks to nullify the decision of the United States Supreme Court (discussed below) in Grove City College v. Bell ("Grove City").[2] The critical issue raised by both bills can be stated simply: To what programs and activities of an organization should certain federal antidiscrimination statutes reasonably apply as a result of the receipt of federal financial assistance?

Although not free from ambiguity, in many respects the House bill is clearer in its thrust than the legislation introduced last year to overturn Grove City. In the case of private corporations, or other private organizations and entities such as churches, the House bill would encompass virtually every aspect of their operations if any part receives any federal assistance. In contrast, the Dole bill takes a less pervasive institutional approach. As applied to educational institutions, it would define the phrase "program or activity" to mean the entire educational institution itself. For other kinds of institutions and organizations, it does not define the term "program or activity", but does nullify the precedential effect of Grove City by providing that the term "program or activity" shall be interpreted without reference to the Court's rationale in that case.

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[1] An identical companion bill in the Senate, S.431, was introduced by Senator Kennedy on February 7, 1985.

[2] 104 S.Ct. 1211 (1984).

I. Introduction

In Grove City the Supreme Court held that the College's financial aid program became subject to the provisions of Title IX of the Education Amendments of 1972 ("Title IX")[3] when some of its students received federal grants. Title IX prohibits discrimination on the basis of sex in education programs and activities receiving federal financial assistance. The Court concluded that an agency's authority to promulgate regulations and to terminate federal funds is subject to the program-specific limitations of the language in Title IX itself. It held that the student grants constituted federal assistance to the College's financial aid program, and only that program could properly be regulated under Title IX. In the Court's view, receipt of federal grants by some of the College's students did not trigger institution-wide coverage for every program or activity of the College under Title IX.

II. Implications of Grove City

The Supreme Court's decision in Grove City involved only Title IX. However, concern has been expressed that the Court construed Title IX too narrowly, and that its decision could lead to similar interpretations of three other antidiscrimination statutes which have language comparable to that found in Title IX.[4] Those statutes are:

1) Title VI of the Civil Rights Act of 1964[5] ("Title VI") which prohibits discrimination on the basis of race, color, or national origin, under any program or activity receiving federal financial assistance;

2) Section 504 of the Rehabilitation Act of 1973[6] ("Section 504") which prohibits discrimination on the basis of handicap under any program or activity receiving federal financial assistance; and

3) The Age Discrimination Act of 1975[7] ("Age Discrimination Act") which prohibits discrimination on the basis of age under any program or activity receiving federal financial assistance.

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[3] 20 U.S.C. §1681, et seq.

[4] This is a reasonable expectation, particularly in light of Consolidated Rail Corp. v. Darrone, 104 S.Ct. 1248 (1984), where the Court, relying on Grove City, concluded that Section 504's ban on discrimination on the basis of handicap was limited to specific programs that receive federal financial assistance.

[5] 42 U.S.C. §2000d, et seq.

[6] 29 U.S.C. §794.

[7] 42 U.S.C. §6101, et seq..

With certain limitations, the proscriptions of the four statutes and their implementing regulations apply to employment practices as well as other practices and policies of recipients of federal financial assistance. Title VI does not apply to employment practices "except where a primary objective of the Federal financial assistance is to provide employment."[8] The Age Discrimination Act does not apply to employment practices "[e]xcept with respect to any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act."[9]

Catholic institutions which participate in federal grant programs are required to comply with the above statutes and their implementing regulations. It should be noted that Title IX contains two exceptions of particular interest to Catholic institutions. Title IX does "not apply to an educational institution which is controlled by a religious organization if the application...would not be consistent with the religious tenets of such organization."[10] In addition, Title IX does not apply to the admissions policies of private, single sex schools at the elementary, secondary, and undergraduate levels.[11] It should also be noted that Title IX applies only to *education* programs and activities whereas Title VI, Section 504, and the Age Discrimination Act apply to *any* program or activity receiving federal financial assistance.

III. *State of Law Prior to Grove City*

The political debate which surrounded last year's legislation (the Civil Rights Act of 1984) underscores the need for clarifying statutory language rather than reliance on legislative history. Some proponents described the legislation as merely restoring the state of the law to what it was just prior to the *Grove City* decision, *i.e.* that institutions, in their entirety, were covered under the statutes. The difficulty with this argumentation is that the state of the law was not settled prior to *Grove City*. Whatever consensus may have existed among some interested persons and on the federal agency level on the question of "institutional" or "systemic" coverage versus program-specific coverage, judicial decisions dating back to 1969 indicated clearly that the statutes are limited to the particular programs or activities, not entire institutions and systems, receiving federal financial assistance.

Two years prior to its *Grove City* decision, the Supreme Court concluded, in an employment discrimination case, "that an agency's authority under Title IX both to promulgate regulations and to terminate funds is subject to the program-specific limitation of §§901 and 902."[12] Several Courts of Appeals had concluded likewise with respect to Title IX,[13] Title VI,[14] and Section 504.[15] As long ago as 1969 the Fifth Circuit, in a fund termination case, rejected an argument by HEW that the term "program" in Title VI embraced general categories such as road programs and school programs.[16]

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[8] 42 U.S.C. §2000d-3.

[9] 42 U.S.C. §6103(c)(1).

[10] 20 U.S.C. §1681(a)(3).

[11] 20 U.S.C. §1681(a)(1).

[12] *North Haven Board of Education v. Bell*, 102 S.Ct. 1912, 1926 (1982).

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[13] Hillsdale College v. HEW, 696 F.2d 418 (6th Cir. 1982), vacated in light of Grove City College v. Bell, 104 U.S. 1211 (1984) ("In short, we find that the legislative histories of Title VI and Title IX reveal no indication that Congress contemplated that an entire educational institution could constitute a single 'program or activity.'" 696 F.2d at 427); Dougherty County School System v. Harris, 622 F.2d 735 (5th Cir. 1980), vacated in light of North Haven Board of Education v. Bell, 102 S.Ct. 1912 (1982) ("the Secretary [of HEW] exceeded his authority by enacting general regulations prohibiting sex discrimination in employment without limiting their effect to specific programs that receive federal financial assistance." 662 F.2d at 738); Rice v. President and Fellows of Harvard College, 663 F.2d 336 (1st Cir. 1981), cert. denied, 102 S. Ct. 1976 (1982) ("The precision with which Congress defined educational institution strongly indicates that it did not equate education program with educational institution .... In light of §1681(c), the only meaningful interpretation of §1681(a) is that it prohibits sex discrimination in a federally funded education program offered by an educational institution." 663 F.2d at 336); Romeo Community Schools v. U.S. HEW,, 438 F. Supp. 1021, (E.D. Mich. 1977), aff'd, 600 F.2d 581 (6th Cir. 1979), cert. denied, 444 U.S. 972 (1979) ("HEW contends that the term 'program or activity' as used in §1681 [Title IX] refers to the entire operation of the recipient educational institution .... Hence, HEW argues that it may regulate employment practices through a school district's entire system. This novel and protean interpretation of a well established statutory term was thoroughly refuted in Board of Public Instruction of Taylor Co. v. Finch, 414 F.2d 1068, 1077 (5th Cir. 1969)." 438 F. Supp. at 1033 n.18).

[14] Mandel v. HEW, 411 F. Supp. 542 (D.Md. 1976) affirm'd by equally divided court, 571 F.2d 1273 (4th Cir. 1976) ("There is much authority for the proposition that Title VI requires HEW to employ a program-by-program analysis when reviewing federally funded institutions."411 F.Supp. at 556); see also Board of Public Instruction of Taylor Co. v. Finch, 414 F.2d 1068 (5th Cir. 1969).

[15] Doyle v. University of Alabama, 680 F.2d 1323 (11th Cir. 1982) ("There is no question that the University of Alabama, a multiprogram entity, receives federal funds for some of its programs. But this fact alone does not subject the entire university to liability under §504." 680 F.2d at 1326); Brown v. Sibley, 650 F.2d 760 (5th Cir. 1981) ("we find persuasive reasons for concluding that the receipt of federal financial assistance by a multiprogram entity, for specific application to certain programs or activities, does not, without more, bring all of those multiple programs or activities within the reach of section 504." 650 F.2d at 767); see also Simpson v. Reynolds Metals Co., Inc., 629 F2d 1226 (7th Cir. 1980).

[16] Board of Public Instruction of Taylor Co. v. Finch, 414 F.2d 1068, 1076 (1969).

As the above demonstrates, prior to *Grove City* a significant number of courts had rejected the broad "institutional" approach advocated by federal agencies. In short, a conflict existed between administrative interpretations and the weight of judicial authority.[17] This conflict became more evident during the 1970s and early 1980s with the increase in litigation over the scope and application of Title IX and Section 504.[18] Broad generalizations that either the House bill or the Dole bill would merely return the law to its prior state do not accurately describe the situation.

IV. Amendments Proposed by the House Bill

The House bill would make two basic changes in the four antidiscrimination statutes[19] it amends. Those changes are:

1) a definition of the statutory term "program or activity" is added; and

2) termination of assistance applies to the "assistance which supports" noncompliance, rather than the program (or part thereof) in which noncompliance has been found, as now provided.

Each change is discussed in detail below.

In reviewing the proposed changes, it is important to bear in mind that remedial civil rights statutes are generally construed broadly. In the case of Title IX the Supreme Court has recognized the need to accord it "a sweep as broad as its language."[20] Courts will be reluctant to read into a civil rights statute a limitation not apparent on the face of the statute.[21]

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[17] There are some early Circuit Court decisions under Title VI, *e.g. Bossier Parish School Board v. Lemmon*, 370 F.2d 847 (5th Cir.)., *cert*. denied, 388 U.S. 913 (1917), and some more recent District Court decisions under Section 504, *e.g.*, *Poole v. South Plainfield Board of Education*, 490 F. Supp. 948 (D.N.J. 1980); *Wolf v. South Colonie School District*, 534 F. *Supp*. 758 (N.D. N.Y. 1982), that lend support to the "institutional" approach. However, the majority of Courts of Appeals which focused on this issue in recent years had adopted a "program-specific" approach to the statutes. Two notable exceptions were the decisions in *Grove City College v. Bell*, 687 F.2d 684 (3rd Cir.), which was reversed by the Supreme Court, and *Haffner v. Temple University*, 688 F.2d 14 (3rd Cir. 1982), which had relied on the Third Circuit's *Grove City* decision.

[18] There are few reported cases involving the application of the Age Discrimination Act.

[19] Title IX, Title VI, Section 504, and the Age Discrimination Act.

[20] *Grove City College v. Bell*, 104 S. Ct. 1211, 1217 (1984).

[21] *Id*.

A. Definition of Program or Activity

The definition of program or activity is critical to the basic coverage and enforcement provisions of all four statutes. The House bill would add an identical definition to each statute:

> "the term 'program or activity' means all of the operations of--
>
> (1) (A) a department or agency of a State or of a local government; or
>
> (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;
>
> (2) (A) a university or a system of higher education; or
>
> (B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;
>
> (3) a corporation, partnership, or other private organization; or
>
> (4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);
>
> any part of which is extended Federal financial assistance." (Emphasis added.)

Each of the underlined parts of the definition is analyzed in 1,2,3,4 and 5 below.

1. "All of the Operations." By defining the term "program or activity" to include all of the operations of any of the entities described in subsections 1,2,3, and 4 of the proposed definition, the House bill would make clear the expensive reach of the affected statutes should it be enacted. The words "all of the operations" are relatively clear and straightforward. They would encompass virtually every aspect of an entity's operations. Thus, in the absence of statutory exceptions, all of the activities of an entity (*e.g.*, a diocese or church) would be subject to the proscriptions of the four statutes, and the interpretations and regulatory requirements of federal administrative agencies (discussed *infra*), if any subunit or activity receives federal financial assistance.

As noted above, Title IX is limited to education programs and activities that receive federal financial assistance.[22] Because of the breadth ("all of the operations") of the proposed definition of program or activity, and in the absence of restrictive or qualifying legislative history, under the House bill Title IX's proscriptions against sex discrimination would no longer be limited to educational programs as is the case under the present statute. They would include all of the activities, both educational and noneducational, of an organization that operates an education program among its various activities.[23]

2. "Or Other School System." The inclusion of "other school system" as a separate classification in subsection (2)(B) is significant for several reasons. First, it seems clear that "other school system" has been included specifically to apply to private schools. Thus, to the extent one can settle on an acceptable definition of a private "school system," all operations of that "system" (e.g., every individual school within the system) would be subject to the statutes even if only one school within the system receives federal financial assistance. Second, the concept of a private school system poses special problems, particularly since federal agencies would be involved in defining what is meant by "other school system." What constitutes a private school system has generated controversy in the past. It was an issue of particular concern to the Conference when the Internal Revenue Service made reference to a system of commonly supervised private schools in a revenue procedure proposed in 1979 for use in determining whether private schools have racially discriminatory policies, and therefore are not qualified for tax exemption under the Internal Revenue Code.[24]

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[22] As presently written, the basic coverage provision of Title IX provides: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance...." 20 U.S.C. 1681(a) (emphasis added).

[23] The statements of the principal sponsors on the introduction of the Senate bill, S.431, gave no indication that Title IX's application would be limited to the educational programs of non-education institutions and organizations such as hospitals, museums, and private corporations. See 131 Cong. Rec. S1301-16 (daily ed. Feb. 7, 1985). In contrast, on the introduction of last year's legislation, S.2568, the joint explanation by Senator Kennedy and Senator Packwood stated specifically that "[w]ith respect to the educational services and related benefits offered by a non-educational institution, such as a museum or hospital not affiliated with a university, or a juvenile or adult prison facility, Title IX will cover those services and related benefits, not the entire institution." 130 Cong. Rec. S4586 (daily ed. April 12, 1984).

[24] See Proposed Revenue Procedure On Private Tax-Exempt Schools, 44 Fed. Reg. 9451, 9453 (February 13, 1979). As a result, on two occasions, in 1979 and 1980, USCC's Administrative Board discussed the issue of a "Catholic school system." At that time much concern was expressed that Catholic schools should not be equated with the public school system for several reasons, e.g., (1) different administrative, financial and legal

(cont'd)

It is reasonable to assume that efforts would be made, either by federal agencies or private litigants, to define "school system" broadly to include all parochial elementary and secondary schools within a diocese, regardless of the corporate structure within the diocese, because of the canonical and supervisory authority of the Ordinary in relation to the schools. Similar arguments have been advanced in the past by the National Labor Relations Board ("NLRB") in New York[25] and Pennsylvania,[26] and the Environmental Protection Agency ("EPA") in relation to removal of asbestos materials in schools.[27]

3. "A Corporation...Or Other Private Organization." "Corporation" is a familiar term which, unless legislative history indicates a different result, would be given its ordinary meaning. Thus, all of the activities of an incorporated organization would be subject to coverage if any part of the activities of the corporation received federal financial assistance. A different result is not likely where all the parishes and diocesan activities are organized as a corporation sole. The words "other private organization" would include unincorporated associations, joint ventures, and other kinds of private organizations.

On the national level, organizations such as the USCC, NCCB, Catholic Relief Services, and the National Catholic Educational Association would all fall within the term "corporation...or other private organization." Any of these organizations would be subject to coverage if any of its departments or activities received federal financial assistance.

4. "Any Other Entity." The word "entity" in subsection (4) is not defined. On its face, and because of the earlier reference in subsection (3) to "a corporation, partnership, or other private organization", it is not limited to separate legal entities. Thus, the question arises as to whether a diocese,

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structures in the various dioceses, (ii) differing degrees of supervision by local ordinaries over Catholic schools in the respective dioceses, and (iii) autonomy exercised at the parish level in matters of finance, employment, and curriculum. It was also noted that, at times, it is advantageous for Catholic schools to be treated similarly to public school districts, e.g., for participation in federal programs such as the energy conservation program, and, at the present time, the asbestos removal program.

[25] See N.L.R.B. v. Bishop Ford Cent. Catholic High School, 623 F.2d 818, 823 (2nd Cir. 1980).

[26] See Caulfield v. Hirsch, 95 LRRM 3164 (E.D. Pa. 1978), where the NLRB asserted that the Archdiocese of Philadelphia, along with individual pastors, were joint employers of lay teachers in approximately 275 parish elementary schools.

[27] In 1984 the EPA adopted the position that, if a Catholic diocese performs functions similar to functions performed by public school districts, it would be held responsible for compliance with rules pertaining to asbestos in schools for schools within the diocese. See TSCA Compliance Program Policy No. G-ASBESTOS-2 (July 1984).

and all its parishes, schools, and other institutions, whether separately incorporated or not, could be considered a single "entity" within the meaning of the House bill. This is a very real possibility given (i) the liberal interpretation that will be given to the House bill (ii) the canonical and supervisory authority of Ordinaries over diocesan institutions, even where separate incorporation exists, and (iii) the practical experiences with the NLRB and EPA in New York and Pennsylvania.

Assuming that all activities of a diocese could be considered as a single "entity" under subsection (4), all of those activities would be subject to the four statutes if any one of the activities (*e.g.*, a parish school) received any federal financial assistance.

5. *"Any Part of Which Is Extended Federal Financial Assistance."* The words "any part of" are clear and unambiguous. If any part of a private corporation, organization or other entity receives federal financial assistance, all of the "operations" of the entire corporation, organization or entity would be subject to coverage under the four statutes.

The words "which is extended federal financial assistance" are not defined in the House bill. As previously noted, they will be interpreted broadly; they will include federal financial assistance received directly, or indirectly through another person or entity, as is the case under existing regulations, *e.g.*, student grants (as was the case in *Grove City*), or federal funds passed through a state agency to local governments and private organizations. Federal financial assistance can be extended through means other than funds, *e.g.*, personnel services, use of real or personal property, and the sale of property at reduced prices.[28]

B. *Termination of Funding*

Using Title IX as an example, under the House bill violation of one of the antidiscrimination statutes can bring about the termination of funding. The relevant provision refers to "the termination of or refusal to grant or to continue assistance to any recipient as to whom [there has been a finding of a failure to comply] but such termination or refusal...shall be limited in its effect to the particular [*assistance which supports*] such noncompliance...." (Emphasis added.)[29] The word "supports" is not defined in the bill. Construed broadly, federal assistance to a diocese (or parish) could be said to "support" noncompliance if it frees up[30] nonfederal funds which are used to fund a parish

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[28] *See* 45 C.F.R. §80.13(b).

[29] 20 U.S.C. §1682. In its present form section 1682 limits termination of funding to "the particular program, or part thereof, in which...noncompliance has been...found."

[30] The theory that federal funds could "free up" nonfederal funds which might be used to support discrimination has been raised in the House of Representatives, *see*, H.R.Rep. No. 98-829, Part 1, 6 (1984), and in litigation, *see*, *e.g.*, *Haffner v. Temple University*, 688 F. 2d 14 (3rd Cir. 1982). It should be noted that the Supreme Court rejected a "freeing-up" argument raised in *Grove City*. 104 S. Ct. 1211, 1221 (1984).

(or diocese) which may be found in noncompliance. Conceivably, under a broad interpretation of "support", federal assistance to an entity, e.g., refugee assistance funds provided to a diocese, could be terminated if it in some way "supports" discrimination in another part of the diocese (e.g., a parish) even though the discriminating parish itself does not receive any federal funds and no discrimination has been found in the diocesan refugee program. Adding to the ambiguity, it is not clear that "support" is limited to financial support. For example, it is reasonable to assume that the provision of services would constitute support.

While the House Committee Report for last year's legislation indicated that the fund termination provision was intended to be narrower than the basic coverage provision and only reflects existing practice in fund termination cases, the new "supports" language may allow a more far-reaching result. The Report indicated that the particular assistance subject to termination "are those funds which sustain, benefit, or assist the noncompliance."[31] The Report stated that it "is impossible to predict with certainty whether this will typically lead to the termination of all or only some of the funds going to a particular recipient."[32]

If there is no intent to change the application of the present fund termination provisions, the proposed change in the present statutory language, which limits termination of funding to "the particular program, or part thereof, in which...noncompliance has been...found," to "assistance which supports" is not needed. The addition of a definition of "program or activity" in other parts of the statutes does not necessitate any change in the fund termination provisions which already apply to "program, or part thereof".

It should be noted that fund termination, the ultimate administrative penalty, must be preceded by (1) agency efforts to resolve the matter voluntarily and (2) a fact-finding hearing on the record.

V. Amendments Proposed by the Dole Bill

The Dole bill would make two changes in the four antidiscrimination statutes. Those changes are:

1) as applied to educational institutions, the phrase "program or activity" is defined to mean the "educational institution", a term already defined in Title IX to mean "any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school,

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[31] H.Rep. No. 98-829, Part 1, 98th Cong., 2d Sess. 34 (1984).

[32] Id..

college, or department."[33] (Under the Dole bill the term "educational institution" would have the same meaning in all four statutes.); and

2) a rule of interpretation is added which attempts to nullify the precedential effect of Grove City in situations not involving educational institutions.

These changes would be effected by the addition of the following language to each of the four antidiscrimination statutes:

> (a) Notwithstanding the decisions of the Supreme Court in Grove City College, et al. v. Bell, Secretary of Education, et al., and in North Haven Board of Education, et al. v. Bell, Secretary of Education, et al,[34] the phrase 'program or activity' as used in this title shall, as applied to educational institutions which are extended Federal financial assistance, mean the educational institution.
>
> (b) In any other application of the provisions of this title, nothing in subsection (a) shall be construed to expand or narrow the meaning of the phrase 'program or activity' and that phrase shall be construed without reference to or consideration of the Supreme Court decisions in Grove City and North Haven. (Emphasis added.)

The underlined parts are analyzed in A and B below.

A. "Program or Activity" Shall Mean the Educational Institution

The language of subsection (a) is clear and unambiguous. The phrase "program or activity" would mean the entire educational institution itself in cases involving educational institutions receiving federal financial assistance. Senator Dole explained: "It [S.272] would amend all four laws to make clear that where Federal financial assistance is extended to any educational program or activity of an educational institution, the institution itself is to be considered the covered program."[35] Thus, if any part of an educational institution receives assistance, the entire institution would be subject to coverage under the four statutes.

Subsection (a) would reverse the Grove City decision, which on its facts is limited to financial assistance to an educational institution (i.e. financial assistance to a college's financial aid program through grants to students). Subsection (a) does not, however, attempt to define the phrase "program or activity" in the context of other kinds of programs or institutions, e.g., hospitals, transportation departments of state governments, social welfare agencies, etc.

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[33] 20 U.S.C. §1681(c).

[34] 102 S.Ct. 1912 (1982). Two years prior to Grove City the Court in North Haven had concluded "that an agency's authority under Title IX both to promulgate regulations and to terminate funds is subject to the program-specific limitation of §§901 and 902." 102 S.Ct. at 1926.

[35] 131 Cong. Rec. S638 (daily ed. January 24, 1985).

The Dole bill does not address the issue of system-wide coverage in the educational area. Given the present definition of "educational institution" quoted above, it would not have the effect of extending coverage under the statutes to entire school systems, e.g., a public school district or a state system of higher education, if one school or college within the system receives federal financial assistance, as would be the case under the House bill. As applied to Catholic institutions, subsection (a) would have the effect of extending coverage under the four statutes to all of the activities of any school, college, or university if any program or activity, e.g., school lunch program, receives federal financial assistance.

B. Non-Educational Institutions - Construction of the Phrase "Program or Activity" Without Reference to Grove City

Subsection (b) provides, in part, that "nothing in subsection (a) shall be construed to expand or narrow the meaning of the phrase 'program or activity'" in other applications of the four statutes. The intent and effect of this language is clear; the subsection (a) definition will not affect the meaning of "program or activity" in other contexts, e.g., hospitals, social welfare agencies, etc. Subsection (b) provides further, in part, that the "phrase [program or activity] shall be construed without reference to or consideration of the Supreme Court decisions in Grove City and North Haven" in other applications of the statutes. On the introduction of S.272 Senator Dole described this provision as "a grandfather clause...to insure that the Grove City case does not serve as precedent for judicial interpretation of civil rights coverage in other areas, it being the clear intent of this bill that such coverage is to be as broad as it was before the case was decided."[36]

Subsection (b) does not resolve the substantive issue, i.e. to what programs and activities should the four antidiscrimination statutes reasonably apply as a result of the receipt of federal financial assistance. It would merely grandfather an unsettled situation, i.e. the state of the law prior to Grove City.[37] In all likelihood this would lead to continued controversy and litigation concerning the application of the statutes in situations not involving educational institutions, e.g., hospitals, social welfare agencies, etc. When faced with the question of the meaning of the phrase "program or activity" in these situations, subsection (b) would not preclude courts in the future from independently reviewing the statutes, and their legislative histories, and concluding that the phrase should be construed narrowly, as the Supreme Court did in Grove City. Indeed, the weight of judicial authority prior to the Grove City and North Haven decisions points the way to this construction. All concerned, i.e. federal agencies, recipients of federal assistance, and protected individuals, would benefit from greater clarity in this aspect of the Dole bill.

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[36] Id.

[37] See discussion under Part III of this memorandum and the relevant cases cited in footnotes 13-16.

VI. Basic Provisions of Antidiscrimination Statutes

Neither the House bill nor the Dole bill would make any changes in the language of the basic provisions of the four affected statutes. Subject to existing statutory exceptions,[38] discrimination (on the basis of race, color, national origin, sex, handicap, and age) would continue to be prohibited.

The bills do not address substantive questions concerning what kinds of discriminatory acts are proscribed by the affected statutes. However, because the proposed definition of program or activity in the House bill is so expansive and could include virtually every activity of a diocese, its potential ramifications cannot be fully understood without an appreciation of the kinds of activities affected by the statutes, and the broad regulatory authority entrusted to federal agencies to implement them. The following should provide adequate insight.

A. Discrimination Without Intent

The impact of the four statutes (and implementing regulations) is not limited to intentional, invidious acts of discrimination. The regulations implementing all four statutes proscribe acts which have a disproportionately adverse effect on individuals on the basis of race, color, national origin, sex, handicap, and age.[39] In addition, two recent Supreme Court decisions hold that discriminatory intent need not be shown to establish a violation of Title VI[40] or Section 504.[41] The utilization of an "effects" standard substantially expands the kinds of actions or policies that may be found to be discriminatory under the statutes, thereby expanding the scope of federal regulatory authority over the activities of institutions and organizations receiving federal financial assistance. The following examples illustrate the potential scope and impact of the statutes on recipients of federal financial assistance.

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[38] Title IX contains a number of exceptions, and Title VI and the Age Discrimination Act contain certain limitations regarding employment practices.

[39] See 45 C.F.R. §80.3(b)(2) (Title VI); 45 C.F.R. §84.4(b)(4),(5) (Section 504); 45 C.F.R. §86.2(b)(2) (Title IX); 45 C.F.R. §91.11(b) (Age Discrimination Act).

[40] Guardians Association v. Civil Service Commission, 103 S.Ct. 3221 (1983) (actions having an unjustifiable disparate impact on minorities, i.e. a written examination that had a discriminatory impact on the scores and pass rates of blacks and Hispanics, can be redressed through agency regulations implementing Title VI.)

[41] Alexander v. Choate, 53 U.S.L.W. 4072 (U.S. Jan 8, 1985) (proof of discriminatory intent not required to establish a violation of Section 504).

B. Access for Handicapped - Plant, Equipment, Etc.

Under the regulations implementing Section 504, qualified handicapped persons cannot be excluded from participating in a recipient's program because its facilities are inaccessible to or unusable by physically handicapped persons.[42] Institutions can make their programs readily accessible in a variety of ways, *e.g.*, redesign of equipment, reassignment of classes or other services, home visits, delivery of services at alternate sites, and physical alteration of existing facilities.[43] Newly constructed facilities must be designed and constructed so that the facility is readily accessible to and usable by handicapped persons.[44] Recipients are not required to make every facility or every part of a facility accessible.[45] Rather, viewed in its entirety, a recipient's programs and activities must be readily accessible.[46]

Under the expansive definition of program proposed in the House bill, all of the operations and activities of a diocese could be subject to the accessibility requirements of the existing regulations if a single part (*e.g.*, a parish school or Catholic Charities) receives any financial assistance. The proposed definition is broad enough to include any type of physical structure, including churches, within its ambit. It is safe to assume that compliance with the physical accessibility requirements for all activities, rather than those that receive federal assistance, would impose some financial burden on most, if not all, dioceses which receive federal financial assistance.

C. Access for Handicapped - Special Educational/Employment Aspects

In the education area, physical accessibility has been a source of concern to some Catholic educators.[47] However, Section 504's impact on educational institutions is not limited to the accessibility requirements. Handicapped students must be placed in the regular educational environment unless it can be demonstrated that the education of the student, with the use of supplementary aids and services, cannot be achieved satisfactorily.[48] Private schools that operate special education programs are required to follow evaluation, placement, and procedural safeguard procedures for students as specified in the regulations.[49]

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[42] 45 C.F.R. §84.21.

[43] 45 C.F.R. §84.22.

[44] 45 C.F.R. §84.23(a).

[45] 45 C.F.R. §84.22(a).

[46] *Id.*

[47] As recently as December, 1984, USCC received an inquiry from a Catholic school superintendent concerning Section 504.

[48] 34 C.F.R. §104.34(a).

[49] 34 C.F.R. §§104.35, 104.36, and 104.39.

Regulations under Section 504 apply to employment practices as well, including recruitment, hiring, promotions, job classifications, compensation, and fringe benefits.[50] Organizations that receive federal financial assistance must make reasonable accommodations for the physical and mental limitations of otherwise qualified handicapped employees unless the organization can demonstrate that the accommodation would impose an undue hardship on its operations.[51] The need to make reasonable accommodation may not be used to justify denial of employment opportunities.[52] Reasonable accommodation may include making facilities physically accessible, job restructuring, part-time or modified work schedules, acquisition or modification of equipment, provision of readers or interpreters, and other similar actions.[53]

D. Miscellaneous Title VI and Title IX Regulations

Section 504 does not stand alone in its potential to impact substantially on an organization's activities. Under Title VI, a substantial controversy developed over federal guidelines regarding the appropriate type of language instruction that should be required to be provided to students whose primary language was not English. The Title IX regulations address a wide range of subjects and activities, including, housing provided to students,[54] access to course offerings,[55] comparability of shower, toilet, and locker facilities,[56] counseling and guidance services,[57] financial assistance and scholarships,[58] student employment programs,[59] health and insurance benefits and services,[60] athletic programs,[61] employment practices (recruiting, hiring, promotions, wages, fringe benefits, job assignments and classifications, training, etc.),[62] and inquiries into the parental or marital status of employees (*e.g.*, teachers)[63] and students.[64]

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[50] 34 C.F.R. §104.11, *et.seq.*

[51] 34 C.F.R. §104.12.

[52] 34 C.F.R. §104.12(d).

[53] 34 C.F.R. §104.12(b).

[54] 34 C.F.R. §106.32(b).

[55] 34 C.F.R. §106.34.

[56] 34 C.F.R. §106.33

[57] 34 C.F.R. §106.36.

[58] 34 C.F.R. §106.37.

[59] 34 C.F.R. §106.38.

[60] 34 C.F.R. §106.39.

[61] 34 C.F.R. §106.41.

[62] 34 C.F.R. §106.51, *et. seq.*

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The purpose of this discussion is not to address the wisdom or merits of particular regulatory requirements, but rather to demonstrate the comprehensive nature of the those requirements and the substantial impact on institutions and organizations that can result from application of the four statutes.

VII. Enforcement

In addition to the termination of federal funding (discussed above at 9-10), noncompliance with the four statutes is subject to these corrective avenues: (i) affirmative obligations under agency regulations, (ii) legal action by the Justice Department, and (iii) third-party suits.

A. Regulatory Authority - Compliance

Using Title IX as an example, federal agencies are authorized "to effectuate the provisions of section 901 [Title IX] with respect to recipients by issuing rules, regulations, or orders of general applicability...."[65] The present Title IX regulations impose the following affirmative obligations:

1. conduct a self-evaluation and take remedial steps to eliminate the effects of discriminatory practices;[66]

2. adopt and publish grievance procedures for the prompt and equitable resolution of complaints;[67]

3. include statements of nondiscrimination policy in publications;[68]

4. file an assurance of compliance contractually binding the recipient to comply with the regulations;[69] and

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[63] 34 C.F.R. §106.57.

[64] 34 C.F.R. §106.21(c).

[65] 20 U.S.C. §1682.

[66] 34 C.F.R. §106.3.

[67] 34 C.F.R. §106.8.

[68] 34 C.F.R. §106.9.

[69] 34 C.F.R. §106.4.

5. permit access by federal agencies to books, records, accounts, other sources of information, and facilities as may be pertinent to ascertain compliance with the regulations.[70]

Depending on the size and variety of activities of the recipient (e.g., a large diocese), the self-evaluation and adoption of grievance procedures could be a complicated and substantial undertaking if all activities are included, as would be the case under the House bill. In addition to its affirmative obligations, recipients are also subject to agency compliance reviews and investigations. Agency authority is not limited to procedural matters. On at least two recent occasions, the Supreme Court has recognized the authority of federal agencies to define discriminatory practices under the statutes.[71]

It should also be noted that agency rules and interpretations are subject to change in the future.

B. Litigation-Justice Department

Neither bill makes any changes in the statutory language under which the Justice Department can initiate litigation to enforce compliance. Generally, this occurs in matters in which voluntary compliance efforts have failed and an agency elects not to seek termination of funds. The more operations and activities that are subjected to coverage, the greater the exposure to complaints, whether meritorious or not, by employees, students, participants, etc.

C. Private Cause of Action (Third-Party Suits)

A private cause of action for individuals has been recognized under all four of the affected statutes. Thus, in addition to administrative fund termination proceedings and litigation by the Justice Department, recipients of federal financial assistance face the possibility of litigation by third-party individuals (e.g., employees, students, patients, or other participants in the recipient's programs and activities). As in the case of litigation by the Justice Department, the greater the number of operations and activities of a recipient subjected to coverage, the greater the exposure to third-party litigation by individuals. Strongly motivated individuals can cause an organization to incur substantial financial and administrative costs, as the Conference's experience with the Abortion Rights Mobilization, Inc. litigation in New York demonstrates. In addition, where individuals prevail in litigation, reasonable attorneys' fees can be assessed against recipients.[72]

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[70] 34 C.F.R. §106.71.

[71] Guardians Association v. Civil Service Commission, 103 S.Ct. 3221 (1983) (Title VI); Alexander v. Choate, 53 U.S.L.W. 4072 (Jan. 8, 1985) (Section 504).

[72] See 42 U.S.C. §6104 (e)(1)(Age Discrimination Act); 29 U.S.C. §794a(b)(Section 504); 42 U.S.C. §1988 (Title IX and Title VI).

VIII. Areas of Special Concern for the Church

A. Abortion

Some concern has been expressed over what effect the bills might have on abortion rights, or the funding of abortions with public funds. Neither bill mentions abortion or pregnancy, nor do they attempt to define substantively what is meant by discrimination on the basis of "sex". Thus, neither bill would create any new abortion rights. However, it is important to note that Title IX has been interpreted in the regulations to require educational institututions receiving federal assistance to treat pregnancy and termination of pregnancy the same as other temporary disabilities for the purposes of student and employee leave policies and health benefits.[73] The Dole bill would extend the regulations to all of the activities of *educational* institutions that receive federal financial assistance. The House bill would not only extend the reach of the Title IX regulations to all of the operations of such educational institutions, but to all of the operations of other organizations that receive federal assistance and operate education programs.

Whatever may be the impact on others, it should be noted that Catholic institutions are not required to comply with the regulations as a result of the statutory provision which excepts educational institutions controlled by a religious organization if the application of Title IX would not be consistent with the organization's religious tenets.[74]

B. Homosexual Rights

Some have expressed concern that the bills might affect the rights of homosexuals. Neither the bills nor their legislative histories to date indicate that either is intended to create or affect homosexual rights. The Title IX regulations on their face do not protect homosexual rights, and there are no reported federal cases affording such protection. However, legislative and administrative developments should be monitored closely for any changes in interpretation in this area.

C. Religious Tenet Exception - Title IX

As noted, Title IX does "not apply to an educational organization which is controlled by a religious organization if the application of [Title IX] would not be consistent with the religious tenets of such organization."[75] On its face this exception is limited to educational institutions. Since the basic coverage provision of Title IX can apply to an education "program or activity" of a non-educational organization, *e.g.*, a hospital, and the proposed definition of this phrase in the House bill encompasses more than educational institutions, an amendment to the religious tenet exception should be sought to insure that its protection will extend to all institutions, educational or otherwise, which may be subject to Title IX.

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[73] *See* 34 C.F.R. §§ 106.40 and 106.57.

[74] 20 U.S.C. §1681(a)(3).

[75] *Id.*

IX. Disparate Treatment of Private Entities in the House Bill

There is a significant difference in the House bill in treatment between state and local governments, and private corporations and organizations.[76] In the case of state and local governments, subsections (1)(A) and (B) of the proposed definition of "program or activity" would effectively limit coverage to those agencies and departments of state and local governments which receive the federal assistance. Entire city or county governments would not be covered simply because one agency or department receives federal financial assistance. In effect, subsections (1)(A) and (B) require a nexus between the federal financial assistance and the agency or department. This makes sense, given the variety of agencies and departments through which local governments operate.

The same approach, however, is not reflected in subsections (3) and (4) which cover private corporations or organizations operating multiple programs through a variety of agencies, departments, and institutions. While the analogy is not perfect, dioceses, like state and local governments, operate a wide range of programs and activities through various agencies, departments, and subunits. Often, a diocese will encompass a number of cities and counties. In many instances its Catholic population can be quite large, even exceeding that of some large cities and counties. There is insufficient reason to cover every agency, department, parish, and institution in a diocese if any one of them receives federal financial assistance, particularly when the same breadth of coverage does not apply to state and local governments.[77]

X. USCC's Position

USCC's position on legislation to reverse the Grove City decision, as expressed in Msgr. Hoye's letter dated June 11, 1984 (copy attached), has been simple and straightforward. The Conference is supportive of civil rights legislation and the principle that federal financial assistance should be denied to recipient programs which do not comply with civil rights statutes pertaining to that assistance. However, the Conference has been concerned that the addition of unnecessarily broad terms to the statutes, such as that proposed in the definition of "recipient" in the legislation proposed last year and the definition of "program or activity" in this year's House bill, would unnecessarily burden Church units and agencies that themselves do not receive any federal financial assistance. This is a well-founded and reasonable concern which nevertheless comports with our basic commitment to sound civil rights legislation.

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[76] In the educational area, public and private universities and educational systems are treated similarly in subsection (2) of the proposed definition. However, as discussed above, the concept of a private school system, and whether Catholic schools at the elementary and secondary level constitute a system, poses special problems.

[77] The statements of the principal sponsors on the introduction of the Senate bill, S.431, do not explain the rationale, if any, underlying the disparity in treatment. 131 Cong. Rec. S1301-16.

In order to insure that federal monies do not fund discrimination in any reasonable sense, it is not necessary to enact legislation that applies to private agencies that do not themselves receive federal financial assistance, and to burden them with the administrative and financial costs of compliance with regulatory requirements, or to expose them to costly litigation and administrative investigations. As the above discussion indicates, the cumulative impact of (i) comprehensive regulatory requirements, (ii) exposure to administrative investigations, (iii) threat of fund termination to related organizations, and (iv) exposure to litigation, can be substantial. The scope of coverage under the statutes should bear a proximate and direct relationship to the federal assistance which triggers that coverage.

The proposed definition of "program or activity" in the House bill does not meet the concerns expressed in Msgr. Hoye's June 11 letter. If anything, the breadth of the proposed definition exacerbates the problem. As with last year's legislation, it would be appropriate to pursue amendments to this bill that would clarify the applicability of these statutes only to those Church institutions and agencies which actually receive federal financial assistance directly, or through another person or entity.

The Dole bill meets the concerns expressed by Msgr. Hoye regarding coverage of institutions which do not receive federal financial assistance. In the case of an educational institution, coverage would be extended to include the entire school if any program of the school receives federal financial assistance. The bill would not extend coverage beyond the school that receives the assistance to other related organizations. Thus, the Dole bill incorporates "institution-wide" coverage for those schools that receive federal financial assistance. This approach is limited, however, to educational institutions. Despite the "grandfather" provision in subsection (b) which attempts to neutralize the effect of the *Grove City* and *North Haven* decisions, earlier case law would support a program-specific interpretation similar to that adopted by the Supreme Court in *Grove City*, *North Haven*, and *Consolidated Rail Corp*. Thus, coverage under the four statutes for a non-educational institution, *e.g.*, a hospital or a social welfare agency, could extend only to the particular programs that receive federal financial assistance, not the entire hospital or agency. This result would not fully comport with the theme of Msgr. Hoye's letter which implicitly supported the principle of institutional coverage for those organizations that actually receive federal financial assistance. However, that result would not adversely affect our institutions.

XI. Conclusion

In evaluating the respective merits of the two bills, it should be emphasized that they represent but two alternatives to a complex issue. Other viable alternatives may surface during the course of the legislative process, either in the form of a compromise bill, or perhaps a bill with an entirely new approach. It is important that we closely monitor legislation in this area and, where appropriate, continue to pursue amendments which bear a reasonable relationship to the policy of denying public support of unlawful discriminatory practices.

General Counsel

ATTACHMENT

UNITED STATES CATHOLIC CONFERENCE
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MOST REVEREND JAMES W. MALONE, D.D.
BISHOP OF YOUNGSTOWN
President

REVEREND MONSIGNOR DANIEL F. HOYE
General Secretary

REVEREND RONALD C. ANDERSON
REVEREND DONALD E. HEINTSCHEL
MR. FRANCIS X. DOYLE, JR.
Associate General Secretaries

June 11, 1984

Hon. Orrin Hatch, Chairman
Senate Committee on Labor and
Human Resources
Room 428, Dirksen Office Building
Washington, D. C. 20510

Dear Senator Hatch:

I am writing to express the strong support of the United States Catholic Conference for the principles of non-discrimination incorporated in S. 2568, the Civil Rights Act of 1984. The passage of this legislation is of central significance for it deals with the very heart of the civil rights protections which have been enacted over the last twenty years. These civil rights laws have done a great deal to root out discrimination in our society and to protect the basic rights of millions of Americans. To permit that legacy to be eroded would be a tragic mistake.

The Catholic tradition defines the human person as "the image of God"; each person has a unique dignity which in turn is the basis for a spectrum of human rights, moral claims which protect and promote the dignity of each person in society. In light of the equal dignity each person possesses, discrimination based on race, ethnicity, sex, age or physical condition is a violation of the moral law which in turn should be the foundation of our constitutional and civil laws. Because discrimination is a direct assault on the dignity of the person, the Catholic Church, in cooperation with the other religious communities of our country, has been proud to be part of the struggle for human and civil rights. It is on the basis of both our moral principles and our past experience in the civil rights arena that we address the Civil Rights Act of 1984.

The decision of the Supreme Court in Grove City College v. Bell, 104 S. 1211 (1984), has made it necessary for Congress to amend the four major federal laws prohibiting discrimination by recipients of federal funds. By amending Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, the Civil Rights Act of 1984 is consistent with the broad coverage that marked the enforcement of these civil rights laws prior to the Grove City decision.

We wish to address a specific part of S. 2568 which we believe requires clarification. The definition of "recipient" in S. 2568 is unclear and could extend the reach of the four statutes to an organization which itself does not receive federal financial assistance. As defined, a recipient includes any private organization "which receives support from the extension of federal financial assistance to any of its subunits." "Subunit" is not defined, nor is it clear when an organization "receives support from the extension of federal financial assistance." Does the bill contemplate only the situation in which a subunit remits federal financial assistance (e.g., funds) to a parent organization, or does it contemplate as well the situation in which a subunit which receives federal assistance provides support to its parent organization from non-federal sources?

If the latter, it would seem that a diocese which receives support from a parish whose school receives a federal energy conservation grant could be considered a "recipient" even though in fact it (the diocese) receives none of the grant funds. Status as a "recipient" might then be construed as requiring the diocese to comply with various administrative regulations and subjecting it to governmental investigations into its various programs and activities. A diocese which is a corporation sole presents particular concerns. In short, an unnecessarily broad interpretation of the term "recipient" could lead to unwarranted governmental intrusion into the internal affairs of religious organizations. We therefore ask that the definition of recipient in S. 2568 be confined to organizations which actually receive federal financial assistance directly or through any subunit or other source.

Precisely because this legislation deals with human and civil rights we also wish to reiterate here our broader concern with the way in which Title IX regulations require educational institutions receiving federal financial assistance to treat abortion in the same fashion as other temporary disabilities for the purposes of student and employee leave and health policies. We recognize that S. 2568 is not directly concerned with dealing with this larger issue of Title IX, but we wish to be on record repeating our concern about this matter.

In summary, we want the Committee to know of our support for the civil rights intent of S. 2568 and our conviction that the definition of "recipient" requires clarification.

Sincerely yours,

Daniel F. Hoye

Msgr. Daniel F. Hoye
General Secretary

CC: Members of the Senate Committee
on Labor and Human Resources

Mr. EDWARDS. The last member of the panel to testify is Mr. Bruce Hafen, who is president of Ricks College and president, American Association of Presidents of Independent Colleges and Universities. Mr. Hafen.

TESTIMONY OF BRUCE HAFEN

Mr. HAFEN. Thank you. Mr. Chairman and members of the committee, I appreciate the opportunity of appearing before you.

I'm here as president of the American Association of Presidents of Independent Colleges and Universities. We call it AAPPICU. I am also president of Ricks College, a private coeducational college in Idaho enrolling over 6,000 students.

My association includes the presidents of some 165 private colleges and universities from 40 different States, with a total enrollment of about 3,330,000 students. Some of these are large universities, such as Baylor, Villanova, and Brigham Young. But most are small colleges with enrollments under 2,500. Many of our schools are church-related, representing numerous denominations. Many are very strong, reputable academic institutions, and are deeply committed as a matter of conscience to the goals of nondiscrimination and equal opportunity in higher education.

Virtually all of our member schools have, until now, admitted students who personally receive Federal financial assistance. However, about 60 percent of our schools receive no direct Federal aid. In general, these schools are distinguished from other private colleges and universities by their determined efforts over many years to finance their own operations totally from the private sector. A principle motivation for the self-reliance has been an intense desire to remain independent of gevernmental control, in order to pursue distinctive educational missions. How ironic it is for these college presidents to realize today that, if H.R. 700 is passed, they will be as completely overwhelmed by the cloak of regulation as if they had applied for the maximum possible Federal assistance over all these years.

I am primarily concerned then about H.R. 700's effect of broadening the application of title IX to private colleges which receive no direct Federal funds and which, in many cases, also have an explicitly religious educational mission. I will strongly urge that you adopt amendments to the proposed legislation in two areas, student aid and religion.

Some of the sponsors of the Civil Rights Act of 1984 and of this year's bill are fond of saying their ultimate goal is to ensure that no one in the country is free to discriminate, or, more modestly, that no Federal dollars are to be used to subsidize discrimination. Let it be remembered that H.R. 700 has not been introduced because of new evidence of discrimination on American campuses or elsewhere. There was no allegation or charge, let alone a finding, of discrimination in the *Grove City* case.

Moreover, these unqualified and emotionally charged generalizations obscure the need for clear headed debate about a terribly important question: Where to draw the line that limits Federal power? What does "subsidize" mean? The economic impact of Federal spending and taxation policies is so pervasive in the comtemporary society that at least one party to almost every daily financial transaction is to some extent subsidized or at least benefited financially by what the Government does.

What does "sex discrimination" mean? Some would argue that any distinction based on gender is discrimination. Did Congress engage in invidious discrimination when it enacted the law exempting women from registering for the draft? Does title IX, as it now reads, wrongly discriminate on the basis of sex when it exempts from its coverage traditionally single-sex colleges, military academies, the YMCA, and the Girl Scouts?

As these examples suggest, there has always been some kind of line between activities that should be regulated by Government and activities that should be left alone. No one has yet seriously suggested that civil rights laws should monitor private, individual choices about such significant economic and social matters as consumer spending or marriage decisions. Thus, H.R. 700 presents Congress with the crucial issue of when, and according to what rational principles, Federal subsidies should, and when they should not, trigger the massive power of regulatory jurisdiction.

Nearly all American colleges and universities recieve a variety of direct Federal aid. If Congress wishes to enact a new law providing for campuswide regulatory coverage for these institutions, that is not, in fact, a terribly large extension of Federal jurisdiction, since so many educational programs and activities are already receiving Federal assistance. Nevertheless, the change in H.R. 700 from program specific coverage to institutionwide coverage is indeed a substantive change in the statutory theory.

My own view is that the Supreme Court correctly interpreted the scope of coverage issue in the *Grove City* case, as did virtually every other Federal court decision prior to that case, despite the broader interpretations that had been applied by some Federal agencies. H.R. 700 is said to be designed to do nothing more that restore the enforcement authority of title IX and other civil rights laws to their pre-*Grove City* status.

A key definitional statement from H.R. 700 says the term "program or activity" originally used by Congress will now mean all of the operations of an entity receiving Federal assistance, which is a good deal like saying that although Congress originally said "tree," the meaning of tree must be restored to mean forest. Congress can obviously change its mind, but I would hope a change could be understood for what it is, rather than being camouflaged by illogical rhetoric.

In the case of schools receiving no direct aid, however, the enactment of H.R. 700 will establish by statute a far-reaching new theory about the scope of Federal power, the theory of indirect benefit as a basis for institutionwide coverage.

Historically, regulations based on the spending power applied only to direct recipients of Federal aid. But in the second part of its *Grove City* holding, the Supreme Court adopted the idea that Federal aid to students is aid to the institutions they attend. That seemed like an acceptable pragmatic compromise when combined with the Court's narrow view of "program or activity," because it limited Federal regulation to the student financial aids office in the case of schools receiving no direct aid. H.R. 700, however, will create campuswide or even systemwide regulation if one student on a Federal grant enrolls at a college which itself receives no Federal funds.

Apart from the problems this creates for colleges which have for years refused Federal aid in order to remain free of intrusive regulation, its real significance is in extending Federal authority to the powerful beachhead of indirect benefit.

With student aid as the landing craft, the theory will be in place to regulate private grocery stores whose customers pay with food stamps or private hospitals whose patients pay with Medicare funds. The next natural step will be regulation of all private schools that benefit indirectly from voucher systems or tuition tax credits. Then the stage will be set or the really big assault, the conditioning of Federal tax exemptions for all educational or charitable institutions on compliance with Federal policy regarding gender-based distinctions, regardless of defenses based on the civil right of religious liberty.

In addition to identifying student aid as a major issue within H.R. 700, this line of reasoning underscores the importance of considering the meaning of religious liberty as a limitation of Federal authority at the time H.R. 700 is being considered.

Thus, H.R. 700 must be amended so that it, first, strengthens the religious exemption now in title IX and, second, excludes certain forms of indirect student aid from the applicable definitions of Federal assistance.

First, a word about the religious exemption. Colleges with a religious orientation have a peculiar set of difficulties with being forced into the mold of State schools. Governmental regulation of matters touching directly upon such a school's educational and religious mission, as title IX does, changes the essential character of the school from being a private institution to being a quasi-public one. Once that line is crossed, there is no turning back from future attempts to impose all the tangled contemporary assumptions about the separation of church and state upon, ironically, the campuses of church-related schools.

Church colleges and universities, freely chosen as private institutions by the students who attend them, have traditionally regarded attitudes about marriage, children and family life and related value questions as central to the concerns of their students.

Thus these schools have, as matters of both educational and religious philosophy, played a vital role in augmenting their students' own family and religious life in the process of value formulation and value transmission regarding family oriented matters. In this sense, church schools act very differently from public schools because state schools are extensions of the democratic state, which has a constitutional obligation to take a more neutral posture on value-oriented matters.

Yes, title IX, as proposed by H.R. 700 to apply campuswide, would tend to establish in private as well as public schools an official orthodoxy about value questions relating to the roles of the sexes in society, matters of sexual morality, and attitudes about marriage and family life. This action is an inappropriate intrusion on the civil right of religious liberty.

Despite both the sensitivity and the significance of religious liberty issues, the Department of Education has been most uncertain about how to interpret and to administer a religious exemption. Therefore, Congress should broaden and clarify the religious exemption now contained in title IX. The current title IX religious exemption is restricted to schools controlled by a religious organization. Religiously oriented schools without controlling church affiliations are also constitutionally entitled to an exemption.

In addition, Congress should direct Federal agencies to interpret the exemption broadly enough to be consistent with the first amendment. Governmental agencies should avoid the role of determining the nature and meaning of religious doctrines. Good faith claims by educational institutions having a bona fide religious mission should be entitled to a presumption of validity, and doubts about the presence and/or meaning of a religious tenet should be in favor of the educational institution.

Finally, a comment about student indirect aid. This is the other area needing correction in any post-*Grove City* legislation, the treatment of non-campus-based student financial aid. And I stress that I am only talking about that kind of aid, aid that goes directly to students and does not come first to the campus. The most prominent example of such aid would be Pell grants which, under H.R. 700 as proposed, would be a source of Federal jurisdiction under title IX.

Pell grants are applied for by and awarded directly to students based upon the satisfaction of personal criteria. The schools do not select student recipients nor are the schools conduits for Federal funds granted to students. They hand out forms and they certify enrollment.

Moreover, when a student receives a Pell grant, the student may spend the money for a variety of education related expenses, from food and lodging to tuition. Costs other than tuition are often high enough in relation to grant amounts to consume all of a student's Federal funds, and such costs may be incurred off campus.

Thus, when a student on a Federal grant pays his or her tuition, it is by no means clear that the tuition is being paid from Federal sources rather than the student's own funds. The reality is, of course, that student aid is to students, who are the primary intended beneficiaries of student aid programs. It is simply incorrect to assume, as many do, that student aid flows directly into the operating budget of a college. Schools do indirectly benefit when students are helped financially to pay their other expenses, but no more so than endless other parties who may receive payment for their goods or services from recipients of general governmental assistance without becoming themselves classified as recipients.

Only when Congress responds to this point will economically disadvantaged students be able to attend all independent colleges, since many of these colleges will refuse admission to students who bring Federal control as the price of their enrollment. One of our member schools, Grove City College, has already announced such a policy. There is a sad irony in realizing that, in this sense, H.R. 700 will reduce the equal educational opportunity of those most in need of personal Federal assistance.

My concerns about the theory of indirect assistance have some broader ramifications. It surprises me that some people assume Congress has always intended to establish regulatory jurisdiction through the spending power over all private entities that have business dealings with individuals who received Federal funds. Last year's proposed Civil Rights Act of 1984 applied the student assistance recipient analogy to an endless variety of circumstances and transactions, which would have included grocery stores and the apartment owners receiving rent from federally subsidized tenants, and private hospitals whose patients pay with medicare funds, and so on.

H.R. 700 seems similarly to include all indirect beneficiaries through subpart (4), which very broadly requires "consistent coverage" among all public and private entities. To be consistent, the line between direct and indirect benefit must be the same for non-educational entities as it is for student aid.

The list of public and private sector activities that will become subject to unprecedented Federal regulation through this concept will be endlessly long and complex. Such circumstances were discussed at length in the debates over the enactment of title VI of the Civil Rights Act in 1964. The legislative history is abundantly clear that Congress totally rejected the indirect benefit theory.

As stated, for example, by Senator Humphrey:

> It is irrelevant, to the purpose of these acts, what the recipient does with the money he receives. His employees, the customers of his business, or other persons with whom he deals, are in no sense participants in or beneficiaries of these Federal programs.

What is a private college? Is it an extension of the State, which has no lawful power to teach its own officially adopted value orientation? Or is it an extension of the parents who enroll their children as its students, and whom we fully expect to adopt an explicit value orientation?

The answer to these questions may well depend on our view of the spending power, or more specifically, our view of the nature of Federal financial assistance to students. The precise issue is whether one student receiving a Pell grant can, by the act of enrolling, change the essential character of an independent college from being an extension of the private parental sphere to being an extension of the State.

We may put our entire concept of the private sector at risk by accepting the notion that any indirect benefit constitutes the same jurisdictional basis for regulation as we have established with direct financial assistance. All private sector entities are benefited indirectly by tax exemptions and other elements of Federal tax policy. Reliance on indirect benefit as a jurisdictional theory clearly brings the Nation much closer to the day when tax-exempt status may be conditioned on compliance with the Federal public policies reflected in not only the civil rights laws, but other major Federal legislation.

Our national commitment to civil rights is a fundamental principle in our democratic structure. But federalism and the distinction between public and private sectors are also fundamental characteristics of our system. There is a crucial ecological balance among these principles. If we pay so much attention to one principle that others are jeopardized, the system itself is jeopardized.

Title IX, then, should be amended to exclude from its definition of recipient those colleges receiving no direct Federal assistance and whose students receive no campus-based benefits. This exemption could be narrowed by not applying it when the student aid involved flows directly to the college, which may have discretion in administering funds or choosing student recipients. The exemption could be further conditioned on a showing that a school had not been found in violation of other civil rights laws and that it was eligible for charitable exemption status under section 501(c)(3) of the Internal Revenue Code.

To summarize, I respectfully urge the committee to adopt new language in any amendments to title IX that will, first, broaden and clarify the existing religious exemption and, second, ensure that indirect student aid will not by itself trigger coverage of institutions receiving no direct Federal assistance.

Thank you very much.

[The prepared statement of Bruce C. Hafen follows:]

TESTIMONY OF
BRUCE C. HAFEN
PRESIDENT, RICKS COLLEGE
AND
PRESIDENT, AMERICAN ASSOCIATION OF PRESIDENTS
OF INDEPENDENT COLLEGES AND UNIVERSITIES

BEFORE THE
HOUSE COMMITTEE ON EDUCATION AND LABOR
AND THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY
CONCERNING H.R. 700,
"THE CIVIL RIGHTS RESTORATION ACT OF 1984"

March 27, 1985

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

- A. Description of AAPICU 1
- B. Defining the Limits of Regulatory Power 2

II. SEX DISCRIMINATION POLICIES AND VALUE-ORIENTED HIGHER EDUCATION 5

- A. Religious, Moral, and Family Values 5
- B. Private Higher Education 7
  - 1. Educational Diversity 7
  - 2. Church-related Schools 8

III. INDIRECT STUDENT AID 9

- A. Student Aid and "Recipient" Status 9
- B. Limitations on "Spending Power" Authority 11

I. INTRODUCTION

Mr. Chairman and members of the Committee, I appreciate the opportunity of appearing before you. I am here in my capacity as President of the American Association of Presidents of Independent Colleges and Universities (AAPICU). I am also President of Ricks College, a private coeducational two-year college in Idaho enrolling about 6,200 students.

A. Description of AAPICU

My association includes the presidents of some 165 private colleges and universities from 40 different states, with a total enrollment of about 330,000 students. (A membership list is attached.) Some of these are large universities, such as Baylor, Villanova, and Brigham Young. However, most are small colleges with enrollments under 2,500. Many of our schools are church-related, representing numerous denominations. Many are very strong, reputable academic institutions. All are deeply committed as a matter of conscience to the goals of nondiscrimination and equal opportunity in higher education.

Virtually all of the AAPICU member schools have, until now, admitted students who personally receive federal financial assistance. However, about 60% of our schools receive no direct federal aid. In general, these schools are distinguished from other private colleges and universities by their determined efforts over many years to finance their own operations totally from the private sector. A principal motivation for this self-reliance has been an intense desire to remain independent of governmental control, in order to pursue distinctive educational missions. How ironic it is for these college presidents to realize today that, if H.R. 700 is passed, they will be as completely overwhelmed by the collective cloak of regulation as if they had applied for the maximum possible federal assistance over all these years.

I am primarily concerned about H.R. 700's effect of broadening the application of Title IX to private colleges which receive no direct federal funds and which, in many cases, also have an explicitly religious educational mission. I strongly urge that you adopt amendments to the proposed legislation in two areas — student aid and religion.

B. Defining the Limits of Regulatory Power

Some of the sponsors of the Civil Rights Act of 1984 and of this year's H.R. 700 are fond of saying their ultimate goal is to ensure that no one in the country is "free to discriminate," or, more modestly, that no federal dollars are to be used "to subsidize discrimination." Let it be remembered that H.R. 700 has not been introduced because of new evidence of discrimination on American campuses or elsewhere. There was no allegation or charge — let alone a finding — of discrimination in the Grove City case.

Moreover, these unqualified and emotionally charged generalizations obscure the need for clear-headed debate about a terribly important question: where to draw the line that limits federal power. What does "subsidize" mean? The economic impact of federal spending and taxation policies is so pervasive in the contemporary society that at least one party to almost every daily financial transaction is to some extent "subsidized" or at least "benefitted" financially by the government. What does "sex discrimination" mean? Some would argue that any distinction based on gender is discrimination. Did Congress engage in invidious discrimination when it enacted the law exempting women from registering for the draft? Does Title IX as it now reads wrongly discriminate on the basis of sex when it exempts from its coverage traditionally single sex-colleges, military academies, the YMCA, and the Girl Scouts?

As these examples suggest, there has always been some kind of line between activities that should be regulated by government and activities that should be left alone. No one has yet seriously suggested that civil rights laws should monitor private, individual choices about such significant economic and social matters as consumer spending or marriage decisions. Thus, H.R. 700 presents Congress with the crucial issue of when — and according to what rational principles — federal subsidies should *and when they should not* trigger the massive power of regulatory jurisdiction.

It is not only simplistic, it is unfair, to claim in this context that anyone who suggests the line should be drawn at point B rather than at point A is opposed to the cause of civil rights in the grand and traditional sense of that term. We are past the stage in our national experience with anti-discrimination laws when the debate can be understood only in terms of who supports and who opposes civil rights. Those who support any cause with constitutional overtones may hoist the flag of civil rights as their own because they believe no one dares oppose so potent a label. Thus, some anti-abortion leaders have recently been recasting their argument in civil rights terms, describing the unborn as the last disenfranchised minority group. Others seek to regulate pornography as a violation of the civil rights of women.

Consider now the factual circumstances and the policy implications of the way H.R. 700 draws the lines of federal jurisdiction as applied to educational institutions. Nearly all American colleges and universities receive a variety of direct federal aid. If Congress wishes to enact a new law providing for campus-wide regulatory coverage for these institutions, that is not, in fact, a terribly large extension of federal jurisdiction, since so many educational programs and activities are already receiving federal assistance. Nevertheless, the change in H.R. 700 from program-specific coverage to institution-wide coverage is indeed a substantive change in the statutory theory. My own view is that the Supreme Court correctly interpreted the scope of coverage issue in the *Grove City* case, as did virtually every other federal court decision prior to that case, despite the broader interpretations that had been applied by some federal agencies. H.R. 700 is said to be designed to do nothing more than "restore" the enforcement authority of Title IX and other civil rights laws to their pre-*Grove City* status. A key definitional statement from H.R. 700 says the term "program or activity" originally used by Congress will not mean "*all* of the operations" of an "entity" receiving federal assistance — which is a good deal like saying that although Congress originally said "tree," the meaning of tree must be "restored" to mean "forest." Congress can obviously change its mind, but I would hope a change could be understood for what it is, rather than being camouflaged by illogical rhetoric.

In the case of schools receiving no direct aid, however, the enactment of H.R. 700 will establish by statute a far-reaching new theory about the scope of federal power: the theory of indirect benefit as a basis for institution-wide coverage. Historically, regulations based on the spending power applied only to direct recipients of federal aid. But in the second part of its Grove City holding, the Supreme Court adopted the idea that federal aid to students is aid to the institutions they attend. That seemed like an acceptable pragmatic compromise when combined with the Court's narrow view of "program or activity," because it limited federal regulation to the student financial aids office in the case of schools receiving no direct aid. H.R. 700, however, will create campus-wide or even system-wide regulation if one student on a federal grant enrolls at a college which itself receives no federal funds. Apart from the problems this creates for colleges which have for years refused federal aid in order to remain free of intrusive regulation, its real significance is in extending federal authority to the powerful beachhead of indirect benefit. With student aid as the landing craft, the theory will be in place to regulate private grocery stores whose customers pay with food stamps or private hospitals whose patients pay with medicare funds. The next natural step will be regulation of all private schools that benefit indirectly from voucher systems or tuition tax credits. Then the stage will be set for the really big assualt: the conditioning of federal tax exemptions for all educational or charitable institutions on compliance with federal policy regarding gender-based distinctions — regardless of defenses based on the civil right of religious liberty.

In addition to identifying student aid as a major issue within H.R. 700, this line of reasoning underscores the importance of considering the meaning of religious liberty as a limitation on federal authority at the time H.R. 700 is being considered. Thus, H.R. 700 must be amended so that it, first, strengthens the religious exemption now in Title IX and, second, excludes certain forms of indirect student aid from the applicable definitions of federal assistance.

II. SEX DISCRIMINATION POLICIES AND VALUE-ORIENTED HIGHER EDUCATION

Laws prohibiting racial discrimination are now in place with an unquestionable basis of support in both social policy and constitutional law. Laws forbidding other forms of discrimination by governmental entities are similarly well-founded. However, when the focus of civil rights legislation shifts away from both race and state action, the policy and constitutional foundations become less secure. This is primarily due to the presence of other protected social and constitutional values that legitimately compete with the values of non-discrimination in areas where neither race nor state action is involved. Serious practical and theoretical problems arise when legal concepts developed in the context of race and/or state action are uncritically transferred to other circumstantial categories involving private action. Yet, the extreme advocates of gender equality understandably seek to accomplish just such transfers.

A. Religious, Moral, and Family Values

The significance of religion, moral values, and family life as matters of national priority is threatened by the single-issue mentality that motivates the most ardent advocates of gender equality. These advocates increasingly argue that the elimination of actual sex discrimination is an insufficient goal of federal civil rights policy. Rather, they insist we must eradicate all "structural" characteristics in both the public and private sector that have the effect of reinforcing female-male distinctions of any kind.

We must remedy actual discrimination in educational, legal, or other environments. But to eliminate all cultural sources of distinctions based on gender is quite another matter, creating problems at least as serious as the ones we are trying to solve. For instance, American society has experienced in recent years a steady erosion of social and legal support for the concept of formal marriage, which has contributed toward increasingly unstable family structures. The most serious harm caused by such instability is inflicted on children, whose developmental needs for continuity and stability are well documented. A persuasive case can be made that a vigorous public campaign is urgently needed to restore "structural" support for the social interest (call it the civil rights of children) in stable family and kinship patterns. Such a campaign would clearly collide with the goal of eliminating all cultural sources of gender distinction.

Consider another example of what happens when race discrimination concepts are uncritically transferred to the sex discrimination area. The Fair Housing Act, one of the original race discrimination laws, was amended a few years ago by simply adding "or sex" to the statute. Shortly afterward, a single female was refused rental accommodations in a student apartment building because of a requirement by a church-related university that single students living off campus reside in sex-segregated buildings. After reviewing the woman's complaint, the Justice Department announced its intention to bring suit. However, when the public media realized that such enforcement of federal sex discrimination laws appeared to require single men and women to share apartments and bedrooms, the roof of public outcry fell in on the Justice Department. An agreement was finally reached which allowed sex-segregated housing at educational institutions, if established "on the basis of religious or moral principle." (Call it religious liberty — a civil right.)

These examples suggest that widely supported religious and moral values can be adversely affected by the indiscriminate application of laws developed in the racial context to circumstances arising in the gender context. It also portrays a major civil rights law that still makes no statutory provision for exceptions of the kind demanded by common sense and discretionary enforcement authority. Title IX has similar problems.

B. **Private Higher Education**

Another major area representing public policy values which can be adversely affected by overbroad regulatory policies is private higher education.

1. **Educational Diversity**. Some people today may assume the only reason a private school would pursue an independently defined mission is to cover up some kind of invidious discrimination. That idea would not be seriously entertained by those who know, even superficially, the history of education in this country or the theory of democratic pluralism on which our entire political system rests. Our educational system — especially at the level of higher education — has long reflected and cherished the diversity that is so natural and so healthy in a democratic system. For centuries, the landscape of U.S. higher education offered a rich variety of colleges and universities, each a one-of-a-kind reflection of the unique vision of its founders. Many were founded by churches seeking to provide a well-grounded education within the context of their religious principles. Different schools had different characters.

This diversity manifested a deeply-held idea that individuals and institutions should be permitted to pursue the goals of education in their own ways. There were single-sex colleges, religious colleges, secular colleges, vocational institutes, and pure liberal arts institutions. Which of these approaches is correct? The government of the United States does not know, nor should it try to decide with finality. Like the economic marketplace, the marketplace of ideas is well-served by divergent approaches and brisk competition. In addition to offering the consumer a wide array of choices, the competitors learn from one another and the entire marketplace is improved. Perhaps more significantly, the variety and individual integrity of such diverse approaches comes close to the heart of the nation's cherished belief that each man or woman should be free to define the meaning and purpose of his or her own life. That freedom includes a student's right to choose his or her own approach in a college education.

2. **Church-related Schools.** Colleges with a religious orientation have a peculiar set of difficulties with being forced into the mold of state schools. Governmental regulation of matters touching directly upon such a school's educational and religious mission (as Title IX does) changes the essential character of the school from being a private institution to being a quasi-public one. Once that line is crossed, there is no turning back from future attempts to impose all the tangled contemporary assumptions about the separation of church and state upon the campuses of church-related schools.

Church colleges and universities, freely chosen as private institutions by the students who attend them, have traditionally regarded attitudes about marriage, children and family life and related value questions as central to the concerns of their students. Thus these schools have, as matters of both educational and religious philosophy, played a vital role in augmenting their students' own family and religious life in the process of value formulation and value transmission regarding family-oriented matters. In this sense, church schools act very differently from public schools because state schools are extensions of the democratic state — which has a constitutional obligation to take a more "neutral" posture on value-oriented matters.

Yet, Title IX, as proposed by H.R. 700 to apply campus-wide, would tend to establish in private as well as public schools an official orthodoxy about value questions relating to the roles of the sexes in society, matters of sexual morality, and attitudes about marriage and family life. This action is an inappropriate intrusion on the civil right of religious liberty.

Despite both the sensitivity and the significance of religious liberty issues, the Department of Education has been most uncertain about how to interpret and to administer a religious exemption. Therefore, Congress should broaden and clarify the religious exemption now contained in Title IX. The current Title IX religious exemption is restricted to schools "controlled" by a religious organization. Religiously oriented schools without controlling church affiliations are also constitutionally entitled to an exemption.

In addition, Congress should direct federal agencies to interpret the exemption broadly enough to be consistent with the First Amendment. Governmental agencies should avoid the role of determining the nature and meaning of religious doctrines. Good faith claims by educational institutions having a bona fide religious mission should be entitled to a presumption of validity, and doubts about the presence and/or meaning of a religious tenet should be resolved in favor of the educational institution.

III. INDIRECT STUDENT AID

A. Student Aid and "Recipient" Status

A second major area needing correction in any post-Grove City legislation is the treatment of non-campus-based student financial aid, such as Pell grants, as a source of federal jurisdiction under Title IX.

The Education Department's original Title IX regulations took the position that an institution is a recipient when a student accepts financial aid, evidently on the theory that when an institution indirectly benefits from aid to one of its patrons, the result is the same as with direct institutional aid. That theory contradicts some very important legal principles well established in other contexts, including those that allow tax exemptions to all charities and those that have allowed aid to parochial schools without amounting to an establishment of religion. It also contradicts the legislative history of Title VI, which the Supreme Court has said may be "crucial to an understanding of congressional intent in 1972 when Title IX was enacted. . . ." Nevertheless, the Education Department's position on the definition of "recipient" in Title IX was ultimately upheld as a matter of statutory interpretation by the Supreme Court in the Grove City case last year. This portion of the Grove City ruling needs to be corrected by congressional action, especially if the "program or activity" limitation is broadened as H.R. 700 proposes.

The impact of the Court's holding was moderated for schools like Grove City College by the Court's determination that statutory coverage must be limited to the school's financial aids program. The majority's resolution of the two issues of "recipient" and "program specificity" could be viewed as a fair result — something of a compromise — in the unique case of a private school which receives no other federal aid. If H.R. 700 is enacted, however, the "compromise" will end. Hence the need to consider the unique problem of the college that has contact with federal funding only through student aid.

"Indirect" educational assistance in the form of benefits to students or their families has long been distinguished from "direct" benefits to schools in the context of Supreme Court cases dealing with aid to parochial schools. The distinction has often been a crucial one, as indirect benefits are the only kind to have withstood Establishment Clause challenges. (See, e.g., Mueller v. Allen.)

Higher education grants to students are clearly of this indirect type. This is especially true in the case of ADS Pell Grants. Pell grants are applied for by and awarded directly to students based upon the satisfaction of personal criteria. The schools do not select student recipients nor are the schools conduits for federal funds granted to students. Moreover, when a student receives a Pell grant, the student may spend the money for a variety of education-related expenses, from food and lodging to tuition. Costs other than tuition are often high enough in relation to grant amounts to consume all of a student's federal funds, and such costs may be incurred off campus. Thus, when a student on a federal grant pays his or her tuition, it is by no means clear that the tuition is being paid from federal sources rather than the student's own funds. The reality is, of course, that student aid is to students, who are the primary intended beneficiaries of student aid programs. It is simply incorrect to assume, as many do, that student aid flows directly into the operating budget of a college. Schools do indirectly benefit when students are helped financially to attend college, but no more so than endless other parties who may receive payment for their goods or services from recipients of general government assistance without thereby being themselves classified as recipients.

Only when Congress responds to this point will economically disadvantaged students be able to attend all independent colleges, since many of these colleges will refuse admission to students who bring federal control as the price of their enrollment. One of our member schools, Grove City College, has already announced such a policy. There is a sad irony in realizing that, in this sense, H.R. 700 will reduce the equal educational opportunity of those most in need of personal federal assistance.

B. Limitations on "Spending Power" Authority

My concerns about the theory of "indirect assistance" have some broader ramifications. It surprises me that some people assume Congress has always intended to establish regulatory jurisdiction through the spending power over all private entities that have business dealings with individuals who received federal funds. Last year's proposed Civil Rights Act of 1984 applied the student assistance "recipient" analogy to an endless variety of circumstances and transactions, including grocery stores that receive food stamps, apartment owners receiving rent from federally subsidized tenants, or private hospitals whose patients pay with medicare funds. H.R. 700 seems similarly to include all indirect beneficiaries through sub-part (4), which very broadly requires "consistent coverage" among all public and private "entities." To be "consistent," the line between direct and indirect benefit must be the same for non-educational entities as it is for student aid. The list of public and private sector activities that will become subject to unprecedented federal regulation through this concept will be endlessly long and complex. Such circumstances were discussed at length in the debates over the enactment of Title VI of the Civil Rights Act in 1964. The legislative history is abundantly clear that

Congress totally rejected the indirect benefit theory. As stated, for example, by Senator Humphrey, "It is irrelevant, to the purpose of these acts, what the recipient does with the money he receives. His employees, the customers of his business, or other persons with whom he deals, are in no sense participants in or beneficiaries of these Federal programs."

What is a private college? Is it an extension of the State, which has no lawful power to teach its own officially adopted value orientation? Or is it an extension of the parents who enroll their children as its students, and whom we fully expect to adopt an explicit value orientation? The answer to these questions may well depend on our view of the spending power, or more specifically, our view of the nature of federal financial assistance to students. The precise issue is whether one student receiving a Pell grant can, by the act of enrolling, change the essential character of an independent college from being an extension of the private parental sphere to being an extension of the State.

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Title IX should be amended to exclude from its definition of "recipient" those colleges receiving no direct federal assistance and whose students receive no "campus-based" benefits. This exemption could be narrowed by not applying it when the student aid involved flows directly to the college, which may have discretion in administering funds or choosing student recipients. The exemption could be further conditioned on a showing that a school had not been found in violation of other civil rights laws and that it was eligible for charitable exemption status under Section 501(c)(3) of the Internal Revenue Code.

To summarize, I respectfully urge your Committee to adopt new language in any amendments to Title IX that will, first, broaden and clarify the existing religious exemption and, second, ensure that indirect student aid will not by itself trigger coverage of institutions receiving no direct federal assistance.

* * *

APPENDIX

AAPICU MEMBERSHIP & ENROLLMENTS
As of March 1985

Abilene Christian University	Texas	4,518
Academy of the New Church	Pennsylvania	159
American Baptist Theological Seminary	Tennessee	177
Anderson College	South Carolina	1,048
Andrews University	Michigan	2,851
Averett College	Virginia	916
Azusa Pacific University	California	2,467
Baker University	Kansas	839
Baptist College at Charleston	South Carolina	2,170
Baylor University	Texas	10,473
Becker Junior College	Massachusetts	1,252
Belhaven College	Mississippi	938
Benjamin Franklin University	D.C.	408
Berea College	Kentucky	1,532
Berry College	Georgia	1,499
Bethany Nazarene College	Oklahoma	1,400
Bethel College	Kansas	661
Biola University	California	3,096
Birmingham-Southern College	Alabama	1,553
Bridgewater College	Virginia	894
Brigham Young University	Utah	29,695
Brigham Young University - Hawaii Campus	Hawaii	1,607
Buena Vista College	Iowa	1,403
Calvin College	Michigan	3,807
Campbell University	North Carolina	3,052
Carroll College	Wisconsin	1,380
Catawba College	North Carolina	987
CBN University	Virginia	350
Central New England College	Massachusetts	306
Chowan College	North Carolina	1,087
Cogswell College	California	456
College of Insurance	New York	1,622
Columbia Bible College	South Carolina	877
Concordia Teachers College	Nebraska	1,062
Cumberland College	Kentucky	1,747
Dallas Baptist College	Texas	1,337
Divine Word College	Iowa	99
Dordt College	Iowa	1,077
Dr. Martin Luther College	Minnesota	725
Dropsie College	Pennsylvania	42
Eastern Nazarene College	Massachusetts	841
Eckerd College	Florida	1,051
Emory and Henry College	Virginia	769
Eureka College	Illinois	537
Flagler College	Florida	981
Furman University	South Carolina	3,105
Geneva College	Pennsylvania	1,141
Georgetown College	Kentucky	1,211
Grand Canyon College	Arizona	1,257
Greensboro College	North Carolina	585
Grove City College	Pennsylvania	2,200
Hanover College	Indiana	994

AAPICU MEMBERSHIP & ENROLLMENTS
As of March 1985

Hardin-Simmons University	Texas	1,948
Hebrew Union College	Ohio	145
Heidelberg College	Ohio	840
Hillsdale College	Michigan	1,044
Houston Baptist University	Texas	2,688
Howard Payne University	Texas	1,123
Illinois Benedictine College	Illinois	2,362
Indiana Institute of Technology	Indiana	557
International College	California	696
International Fine Arts College	Florida	267
Jamestown College	North Dakota	616
Judson College	Illinois	414
Kansas-Newman College	Kansas	759
King College	Tennessee	429
Lenoir-Rhyne College	North Carolina	1,382
Liberty Baptist College	Virginia	3,386
Limestone College	South Carolina	1,536
Loma Linda University	California	5,157
Louisburg College	North Carolina	717
Louisiana College	Louisiana	1,049
Malone College	Ohio	872
Manhattan College	New York	4,841
Maria Regina College	New York	508
McKendree College	Illinois	750
McPherson College	Kansas	496
Mercer University	Georgia	5,081
Meredith College	North Carolina	1,615
Mid-America Nazarene College	Kansas	1,218
Midway College	Kentucky	349
Milwaukee School of Engineering	Wisconsin	2,536
Mississippi College	Mississippi	2,775
Missouri Valley College	Missouri	480
Mount Saint Mary's College	Maryland	1,696
Mount Vernon Nazarene College	Ohio	1,027
National College	South Dakota	3,026
National University	California	6,824
Nichols College	Massachusetts	992
North Carolina Wesleyan College	North Carolina	932
Northrop University	California	1,445
Northwest Nazarene College	Idaho	1,221
Northwestern College	Iowa	891
Northwestern College	Wisconsin	269
Northwood Institute	Michigan	2,119
Oakland City College	Indiana	562
Oakwood College	Alabama	1,418
Ohio Northern University	Ohio	2,625
Oklahoma Baptist University	Oklahoma	1,416
Oklahoma Christian College	Oklahoma	1,614
Oklahoma City University	Oklahoma	3,158
Olivet Nazarene College	Illinois	1,907
Oral Roberts University	Oklahoma	4,024
Our Lady of the Lake University	Texas	1,577

AAPICU MEMBERSHIP & ENROLLMENTS
As of March 1985

Pacific States University	California	650
Pacific Union College	California	1,592
Palm Beach Atlantic College	Florida	656
Park College	Missouri	3,179
Parks College	Colorado	892
Parks College of St Louis University	Illinois	1,029
Patten College	California	143
Peace College	North Carolina	454
Pepperdine University	California	6,499
Point Loma Nazarene College	California	1,870
Principia College	Illinois	788
Ricks College	Idaho	6,539
Robert Morris College	Pennsylvania	5,689
Rockford College	Illinois	1,469
Roosevelt University	Illinois	6,485
Rose-Hulman Institute of Technology	Indiana	1,322
Saint Augustine's College	North Carolina	1,581
Saint Francis College	Pennsylvania	1,565
Saint Joseph's College	Indiana	963
Saint Mary's College	Minnesota	1,404
Saint Mary's College of California	California	2,956
Saint Mary's University	Texas	3,311
Salve Regina - Newport College	Rhode Island	1,961
Samford University	Alabama	4,161
School of the Ozarks	Missouri	1,793
Sierra Nevada College	Nevada	212
Simpson College	California	306
Southern College	Tennessee	1,801
Southern Methodist University	Texas	9,156
Southwestern Adventist College	Texas	712
Southwestern College	Oklahoma	51
Sterling College	Kansas	394
Taylor University	Indiana	1,460
Tiffin University	Ohio	510
Trevecca Nazarene College	Tennessee	972
Trinity Christian College	Illinois	440
Trinity College	Illinois	556
Truett McConnell College	Georgia	852
Union College	Nebraska	1,024
Union University	Tennessee	1,374
University of Dallas	Texas	2,684
University of Mary Hardin-Baylor	Texas	1,170
University of Richmond	Virginia	4,411
Valparaiso University	Indiana	4,251
Villanova University	Pennsylvania	11,716
Warren Wilson College	North Carolina	535
Wayland Baptist University	Texas	1,469
Wentworth Institute of Technology	Massachusetts	3,737
Westminster Theological Seminary	Pennsylvania	422
Wheaton College	Illinois	2,490
Whitworth College	Washington	1,802
William Jewell College	Missouri	1,569
Wingate College	North Carolina	1,481
York College of Pennsylvania	Pennsylvania	4,364
Northwestern College	Minnesota	996
Berklee College of Music	Massachusetts	2,425

Mr. HAYES. Thank you. And I want to thank each member of the panel for what has been a comprehensive and well prepared statement by each of you, enunciating your respective positions. You may rest assured that your entire statement will be made a part of the record of this hearing. And in that light, I would like to suggest before we begin the questioning, that the committee is in receipt of a statement from the American Farm Bureau Federation. And I would like, without objection, to place into the record the entire statement from this group even though they aren't represented here.

Hearing no objection, this will be done.

[The prepared statement of the American Farm Bureau Federation follows:]

PREPARED STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION

The American Farm Bureau Federation is an organization of more than 3.3 million member families in 48 states and Puerto Rico who are members of 2,762 county Farm Bureaus and who finance the organization through voluntary payment of dues.

As the nation's largest general farm organization, representing three-fourths of the commercial farms and ranches in this country, Farm Bureau has an abiding interest in protecting the civil rights of all citizens, regardless of race, gender, national origin, religion or handicap status.

At the same time, our members have a profound belief in limited government, particularly at the federal level, and have consistently opposed any legislation or other actions that would unduly and unnecessarily expand the regulatory authority of the central government over state and local governments or over private citizens and entities.

At the most recent annual meeting of the American Farm Bureau Federation this past January, the voting delegates of the member State Farm Bureaus adopted the following policy on civil rights:

> "Farm Bureau members are firm believers in and supporters of the Constitution, the Bill of Rights, and the basic precepts of our Republic, which call for fair and nondiscriminatory treatment under the law for all citizens.
>
> "We also firmly believe in the private enterprise economic system and that property rights are an important part of civil rights.
>
> "We are not opposed to carefully written legislation to prohibit the use of federal funds by any institution or agency that discriminates against persons due to sex, race, religion, national origin or handicapped status; but we oppose legislation, such as the Civil Rights Act of 1984 and any such broad, vague and all-encompassing language which would expand federal authority and regulatory power over state and local governments and the private sector."

Last year we actively opposed the civil rights bill that was passed by the House and stopped in the Senate. We were convinced by the logic and reasoning of a number of prominent legal and constitutional authoritites that the proposed legislation would have extended federal regulatory authority far beyond steps necessary to reverse the Grove City College decision of the Supreme Court and would have led to massive intervention of a myriad of federal regulatory agencies, not only into the affairs of state and local governments but into the lives and businesses of persons, including farmers and ranchers.

We had hoped that any such legislation proposed in 1985 would seek merely to reverse the Grove City College decision and let well enough alone. We believe that would be accomplished by S. 272, and we have no problem with that bill.

Since the introduction of H.R. 700 we have been analyzing the language in the revised bill, studying the analyses and comments of others and reading the introductory statements of the sponsors in the House and Senate.

We are at a loss to understand why the authors of H.R. 700 deemed it necessary to use such vague, convoluted, confusing and misleading language to accomplish the simple goal they state as the purpose of the bill--namely to reverse the decision of the court in the Grove City College case. That simple purpose is implied in the title by use of the word "restoration."

We are struck by several statements included in the testimony of William Bradford Reynolds, the Assistant Attorney General, presented on March 7, 1985:

"Let there be no mistake about it, the so-called 'Civil Rights Restoration Act of 1985' adopts for the first time a uniquely expansive view of federal authority in the field of civil rights. Nothing about the bill even hints at a 'restoration.' Instead, H.R. 700 uses the extension of a federal dollar as the excuse for opening virtually every entity in this country--public and private--to federal supervision, regulation, intervention, intrusion and oversight. Onerous administrative reporting requirements, disruptive agency compliance reviews, and massive bureaucratic paperwork, all will become a regular feature of a dollar's worth of federal assistance.

"It is no small irony that, on the heels of two elections where the citizens of this Nation voted overwhelmingly to reduce federal intrusion and interference in our daily lives, this Joint Committee is now considering one of the most far-reaching legislative efforts in memory to stretch the tentacles of the Federal Government to every crevice of public and private sector activity."

Either the Assistant Attorney General and many other experts are entirely wrong in their assessment of the bill, or we have here a good example of the lack of truth in advertising.

Although the statutory changes proposed by H.R. 700 would appear on their face to be limited and technical, we are forced to conclude that they would in fact substantially expand the reach of Title VI, Title IX, Section 504 and the Age Discrimination Act. The bill would provide that the term "program or activity" includes all the operations of, among other things, "a corporation, a partnership, or other private organization." Such a definition seems to cover such entities regardless of whether they are engaged in providing federal assistance to ultimate beneficiaries, or are themselves the ultimate beneficiaries of the assistance.

A substantial proportion of the approximately two million farmers and ranchers in this country conduct their farming operations as corporations, partnerships, or "other private organizations," whatever that might mean. Certainly a million farmers and ranchers would be subject to new federal regulation if H.R. 700 were to be enacted, with whatever paperwork burdens and other expensive harrassment that would be involved. The farming sector of this country has enough problems to cope with at the present time without contemplating a massive new intrusion of any number of federal agencies into their day-to-day operations, particularly when such intrusion is clearly not required to restore any civil rights lost by the Grove City College decision concerning federal assistance to educational institutions.

The bill also provides that the term "program or activity" means all the operations of "any other entity determined in a manner consitent with the coverage provided with respect to entities described in (the preceding paragraphs)." Without doubt, that is the most confusing language we have ever discovered in any bill introduced in Congress. Would a farmer who operates as an individual, as opposed to a corporation or partnership be considered an entity? If he is considered an entity within the meaning of the term in this bill, it would appear that he could be construed as an entity determined under H.R. 700 to be included within the terms "program or activity."

The one point that we had hoped would be clarified in this revised legislation is the elimination of any doubt as to whether ultimate beneficiaries of federal assistance are to be regulated under the civil rights statutes. That would seem to be quite simple to accomplish in drafting bill language, but it has not been accomplished in H.R. 700.

We can only conclude that the real purpose of H.R. 700 is to greatly expand the scope and authority of the federal government in the enforcement of civil rights laws and regulations and to go far beyond the simple reversal of the decision of the Court in the Grove City College case.

The American Farm Bureau Federation is opposed to H.R 700 for the following major reasons:

1. The language used in the bill is far too vague, confusing and subject to far-reaching interpretation. It would create a paradise for lawyers and regulators.

2. The bill would inevitably result in unjustified new federal intrusion into the operations of state and local government, and into a major portion of the private sector, including a great many farmers who receive various forms of federal assistance.

3. The principle of analogy contained in Subsection (4) of Section 3 of the bill is particularly obnoxious, implying guilt by association, and utilizing confusing language that could be interpreted to cover any person or entity.

4. The bill fails to exclude ultimate beneficiaries from coverage. The effect on farmers who receive a range of federal benefits is obvious.

5. H.R. 700 would give private parties a new incentive to file lawsuits. Federal law currently provides for the award, at the discretion of federal judges, of reasonable attorney's fees to plaintiffs in private action suits, many of which would be initiated by agencies and groups funded by taxpayers through the Legal Services Corporation. In North Haven Board of Education vs. Bell, 456 U.S. 512 (1938), the court held that enforcement under the "other means" clause of the statute is coextensive with the authority to terminate funds and thus is limited under existing law to the particular program that has violated the statute. Some sponsors of the bill assert that North Haven is one of the decisions that have "unduly narrowed" the application of the civil rights laws. It is clearly their intention that both the injunctive remedy and the private right of action be available against any entity that falls within the definition of "program or activity."

We ask the members of this joint committee to carefully examine and consider the points and questions we have raised and that have been raised by many others. We feel sure the members of this Committee are capable of rewriting this bill so as to reverse the Grove City College decision in clear and unambiguous language and to make it plain that such reversal is the sole purpose of the bill.

Your careful consideration of our views will be most appreciated.

Mr. **Hayes**. I would like to make the point that the Supreme Court has held, and I am sure you understand that, that aid to students is aid to the institution. That issue is resolved and is considered with prior understanding of the operation of Federal assistance.

Why should not the Federal Government require nondiscrimination by all parts of an institution receiving Federal assistance irrespective of whether the aid provided is direct or indirect. That is, should the Federal Government indirectly support discrimination. Mr. Hafen.

Mr. **Hafen**. I would be glad to respond to that, Mr. Chairman. My statement gave a very long answer to that very question. First of all, to say indirectly support discrimination, I repeat there was no discrimination found in the *Grove City* case. There has been no evidence of any new discrimination that I know of anywhere in the country, particularly in education, introduced as the basis for these hearings.

So I don't really think we're talking about addressing, with newly discovered discrimination——

Mr. **Hayes**. You will admit that could have been. Is that right?

Mr. **Hafen**. Anything could have been, but I stress that we are talking about responding to the Supreme Court's action in the *Grove City* case which deals more with legal principles and the theory of limits on governmental authority.

The Supreme Court had two portions to its ruling. It ruled narrowly on the question of the scope of coverage, ruling that only the particular program or activity receiving aid should be covered by jurisdiction. It also ruled that student aid could trigger jurisdiction. When you put those two things together, that's not a big problem for the schools I represent. And I think the Court thought about that. Some of Justices mentioned same in their opinions, that for the private, independent schools, particularly religious ones who have tried so hard to refuse Federal money in order to be free of regulation, the total result of the two parts of the Court's decision was an acceptable pragmatic compromise.

The trouble with it is that it represented a bad theory in that it did establish indirect benefit as a basis for jurisdiction. And my point is simply that once indirect benefit is a basis for jurisdiction in student aid, I see no logical way to stop it from reaching all the other areas that have been said by the sponsors of this bill not to be affected by the bill. While that's an easy thing to say, I don't know what indirect benefit means and I don't know where it stops. It seems to me that a sharp line between direct and indirect benefit is the only way to make sense out of a very complex problem.

Mr. **Hayes**. You will have to admit that the bottom line of the Supreme Court's decision in *Grove City,* permits discrimination on the part of the institution, in one part of the institution, while receiving Federal funds in another part of the institution. Isn't that right?

Mr. **Hafen**. Mr. Chairman, the bottom line of all of the congressional approaches to the civil rights laws is that what you call discrimination is permitted in every area that isn't regulated, and so far regulation has been limited to governmental activities or activities assisted by Federal expenditures.

Mr. HAYES. And by Federal financial assistance?

Mr. HAFEN. Precisely. and what I'm telling you is that, at Grove City College or at my college, a student could enroll at my college, receive a Federal grant and pay all of that money for food and lodging and not a penny of it for tuition; and my college would still be regarded as a recipient of Federal aid. I don't understand that.

Mr. HAYES. I would like to know if any other member of the panel would like to respond to this question of the possibility—should Federal funds—should the Federal Government indirectly support part discrimination in an institution? This is the question involved.

Mr. KAPP. I'd like to respond to that, Mr. Chairman.

I think that it is quite clear, in looking at the legislative history of the original Civil Rights Acts, that the intention was to cover both direct and indirect assistance, as the Supreme Court found. It even seems to me to be more appropriate in this case than in other hypothetical cases, because the purpose in providing for the Pell grants and other forms of indirect assistance was to assist institutions. It is just another form of Federal assistance to institutions.

Mr. HAFEN. Can I respond to that, Mr. Chairman?

Mr. HAYES. You may. Go ahead.

Mr. HAFEN. If a student enrolls at my college and spends his Pell grant for food and lodging and doesn't pay a dime of it for tuition, why does that make my college more a recipient of Federal assistance than it does the grocery store where he may cash his Social Security check or perhaps use food stamps. That institution is more directly benefited.

I acknowledge that both my college and the grocery store are benefited by the way that student spends his money and his ability to attend college. All I'm saying is that indirect benefit is a huge quagmire.

Mr. HAYES. Congressman Conyers.

Mr. CONYERS. Would the gentleman yield? This is really an incredible discussion.

The student with a Pell grant has to qualify because he is so poor he can't otherwise go to your school or any other school. He pays his tuition with that money. He buys his books with that money. He pays his rent, I guess, with some of that money. And he wouldn't be at that school if he didn't qualify. He wouldn't be able to go to school.

I just got this from Marygrove College on Six Mile and Wyoming in my own district in Detroit where 85 percent of the students, according to President Shea, receive Pell grants; and the school will close down if they don't continue to get them in the same amount and the same appropriation and the same numbers as they are now.

Now, you would lose that student, Mr. President, if he wasn't getting a Pell grant. The independent grocer is an independent contractor specifically excluded. We have gone over this. I am going to get pretty good at this by the time the bill comes to the floor. Any other entity determined in a manner consistent with coverage in the above three paragraphs.

What we kept saying is that, unless you are an agency of the State, a State or local government, a university or a system of higher education, or you are connected in some way with those, you are excluded. Private agencies, businesses, franchises, people that sell your students food—who may use food stamps—are not included. You are included.

Now, when you keep telling us, as you have about four or five times, that Grove City was very innocent and had never been proven guilty of anything, you know just like everybody on this committee that we never could find out whether they were discriminating or not because they refused to comply by filling out the form that you filled out and are found not to be discriminating. So we have no way of knowing. Nobody accused them of discrimination, but, Mr. President, noncompliance will deny you the use of Federal funds. We couldn't have it any other way or nobody would be filling out the forms and we would never find out what is going on here.

So let's get real. I mean, it is one thing to come here with a different view of what federalism is. I perfectly respect that right. It is another thing to come here and to continually confuse on the record the most simple language that is possible to be written about who is to be included and who is not to be included.

I would now invite your response.

Mr. **Hafen**. Since there was nothing in the record of the *Grove City* case about discrimination one way or the other, maybe it is best that we make no assumptions about whether it existed or whether it didn't.

Mr. **Conyers**. We don't make assumptions about whether it did or not, but you keep telling us that they are innocent and that they have never been found guilty. What I am saying to you is that we were not prosecuting them or finding them guilty. All we said is that if you don't fill out the form, Buster, you can't get the Federal largess. You do that. You have never refused to fill out the form. None of the other private independent colleges have ever refused to fill out the form. If you fill out the form, you get the bread. If you don't fill out the form, then we don't know what you are doing and you don't get the bread. It's very simple. It can't be made simpler.

Mr. **Hafen**. Mr. Conyers, let me say it one more time. The student aid goes to the students. The students can spend their grants for other expenses other than tuition. As a matter of fact, they are required to be able to finance some of their education themselves.

I have talked with the financial aid officer at my school about that. It's very clear that the students can spend the money they receive from the Government for other expenses other than tuition. So, to say that that money is coming directly to a college is simply inaccurate.

Mr. **Conyers**. Who said that?

Mr. **Hafen**. Well, the assumption is being made.

Mr. **Conyers**. Nobody assumed anything. I said that part of the Pell money is used to pay tuition and part of it is used to eat, and part of it is used to buy books. Now you must know that. The requirements are that you have got to be poor. It doesn't go to everybody, rich and poor alike. It goes to the students who are financially unable to pay their way and they qualify under our rules.

Now, if you don't like those rules, I think we should have another hearing to determine who ought to get Pell grants. I am perfectly willing to entertain that as a separate question. But, to keep telling me that these kids who can't go to school—unless President Shea at Marygrove has got a different group of students, he said they can't stay in school in my district. It is a private college and they need it.

Mr. HAFEN. Sir, just because of what you've said, there is a very important point that needs to be stressed once more. If poor students are unable to attend a Grove City College or any other private college because their enrollment would trigger Federal jurisdiction over that college, then it is the students who are the losers in that case—which again proves the point that they are the beneficiaries of the assistance. A concern about their educational opportunity should take that into account.

Mr. CONYERS. Let me try one more thing here. Do you resent having students who are beneficiaries and recipients under the Pell Grant Program?

Mr. HAFEN. No.

Mr. CONYERS. You welcome them—or do you? You don't really welcome them, but if they need it, you won't discriminate against them.

Mr. HAFEN. Of course we welcome them.

Mr. CONYERS. Oh, you do welcome them? OK, fine. Now, are they spending their money in some way that raises some objection by you? I mean, are they buying stereos or vacationing in Miami on Easter? What is the problem? Don't some of them put those bucks into the tuition that you require?

Mr. HAFEN. The question is simply this.

Mr. CONYERS. Well that's my question to you.

Mr. HAFEN. Are colleges that receive direct Federal assistance going to be in the private sector or the public sector?

Mr. CONYERS. No, that isn't the question. The question is the one that I ask you right now, sir.

Mr. HAFEN. The reason I raised the matter of how the students spend the money is simply to stress that the grant to a student doesn't automatically find its way into the operating budget of a college. That's my only point.

Mr. CONYERS. Well, I see you are good at semantics and I've had some experience with it. The point that I am saying is this. What is going to happen is this. Now, I support private schools getting Federal bucks, but when they start coming in here telling me that they ought to get the Federal bucks—the Pell grant is great—but requiring that they don't discriminate which goes along with the Federal bucks, then you're getting ready to lose some support. You can't have it both ways. You've got to either take it with everybody else or say that you don't like the way kids spend their Pell grant money and you would prefer not to be caught under the Federal controls of not discriminating. That's what we're here for and that's all that we're trying to expend.

All the other rules, sir, and the provisions are exactly we were pre-Grove. But this thing is getting just a little bit out of hand here when I talk to the private school presidents who want the money and want us to continue it and then I meet the heads of associations who tell me that they don't appreciate having to not discriminate as the rules require but they don't mind taking the Pell grant money. I think we've got to come to a parting of the ways on this thing. If you don't like the rules, don't take the students who are recipients.

Mr. **HAYES**. I must interrupt at this time, as chair, colleague Conyers. The Chair prior to me instituted a 5-minute rule and we've already stretched beyond that.

I am not trying to negate the importance of the question. I think it is very important.

I notice Father Byron wants to respond. I will permit that and then we will move on to Congressman Sensenbrenner.

Reverend **BYRON**. As you may recall, I am presenting testimony for a number of associations and these are associations of institutions. You have been hearing testimony from an association of presidents of relatively small institutions, although there were those larger universities that were mentioned in the testimony.

We include in the associations represented here Marygrove and the University of Detroit. We clearly, as my testimony would indicate, would support the view that you are taking here. We would hope that you would not lose your enthusiasm for the support of private higher education in the United States.

Mr. **CONYERS**. Well who am I to believe? I mean, we've got the president of presidents and we've got the head of the school association.

Mr. **HAYES**. You won't lose his enthusiasm in view of what you've said.

Mr. **SENSENBRENNER**. Mr. Chairman.

Mr. **HAYES**. Congressman Sensenbrenner.

Mr. **SENSENBRENNER**. Mr. Chairman, I would like to explore the religious exemption question a little bit further with Father Hehir.

It's my understanding that the way the religious exemption is drafted the church-controlled institutions can get an exemption but church-affiliated institutions cannot. I would guess that institutions like Notre Dame and Saint Mary's in Indiana, which are Catholic institutions of some repute, are not church controlled but they are church affiliated because they are governed by a religious order.

Now, is it your interpretation of this bill that, unless we make the amendment that you have called for, that the student health service at Saint Mary's College would have to provide abortions to students who wanted to have one?

Reverend **HEHIR**. I think I would like to consult with counsel on that.

Mr. **SENSENBRENNER**. Please do.

Reverend **HEHIR**. For the simple reason that it is an interpretation of a law. I'm a political scientist and a theologian and I have never been accused of being a lawyer in my life.

Mr. **SENSENBRENNER**. You're probably ahead for not being accused of being a lawyer.

Reverend **HEHIR**. Well, I've always felt that way, but I didn't want to say that, because I thought the deck was packed with lawyers here.

I thought I was right even though I am not a lawyer. We were not focusing on the control question. I think Father Byron did and that went into more detail.

Our concern was that as we read title IX and H.R. 700 it extends beyond educational institutions and we would like the religious tenet to be sure to be extended to other institutions that would be covered by it.

Mr. SENSENBRENNER. Could you give an example of that specifically?

Reverend HEHIR. A hospital, for example. That would be a case in point. Obviously, Catholic moral teaching has a series of questions that delve into very specific areas of medical moral problems. Catholic hospital institutions get Federal assistance. We would want to be sure that, if the meaning of H.R. 700 is as we think it is, that it extends beyond educational institutions to other institutions. The religious tenet would simply be extended to the same reach. That's essentially our concern.

Mr. SENSENBRENNER. Father Byron, let me ask you the question about whether a Catholic-affiliated institution would have to provide abortions in its student health clinic as a result of this distinction between church-controlled and church-affiliated institutions. I know that you are the president of probably the only church-controlled institution in the country.

Reverend BYRON. Well, again, in my testimony beginning on page 7 when I quoted Ms. Gwendolyn Gregory, who was speaking for the Department of HEW and carried over to page 8, the Department defined what they understood by control at that time to include a list of options. Now, one of the options is simply, if the institution has a school or department of divinity, that would constitute control.

Second, it requires faculty, students or employees to be members of, or otherwise espouse a personal belief in the religion of the organization by which it claims to be controlled. Then it goes on down. What we have suggested in my testimony is that we simply state that an institution's charter and catalogue or other official publication contains explicit reference that it is related to a religious organization or an organ thereof or is committed to the doctrines of a particular faith community.

There are very, very few institutions of higher education—certainly in the associations for which I'm speaking today—that would define themselves as religiously controlled. They function under independent boards of trustees. They embody a tradition. They do have a faith commitment and a church-relatedness, but that governing board is in fact independent of the church body. That's the way most of them are.

Now, what we are calling for in the testimony is precisely for clarification of what is understood by controls so that the problems that you raised could be avoided.

Mr. SENSENBRENNER. Thank you very much.

Mr. HAYES. Congressman Hawkins.

The CHAIRMAN. I'm sorry, Mr. Chairman. I was interested in the testimony of the witnesses this afternoon but had a time conflict. I wanted to assure Father Byron, in particular, that we are cognizant of the problem which he has presented and we are very desirous of furthering a dialog with him in connection with it. This is perhaps not the time to try to arrive at some satisfactory solution, but I wanted to assure him that, as one of the principal sponsors of H.R. 700, that we did want to explore with him some possible solutions or options that we might discuss with him at some time in the immediate future.

Reverend Byron. I understand. We would be happy to. We could put a small group together that would be of assistance to the staff.

The Chairman. Thank you.

Reverend Byron. Thank you.

Mr. Hayes. Congressman Armey.

Mr. Armey. Thank you, Mr. Chairman. I would like to begin, Mr. Hafen, by complimenting you on what I thought was an exceptionally well prepared, articulate, perceptive and well presented paper today.

Father Hehir, if you could address your answers very quickly because I have a lot of ground that I would like to cover. It is my understanding that the Catholic church does not allow women to be priests.

Reverend Hehir. That is true.

Mr. Armey. Is that a matter of a very profound religious belief?

Reverend Hehir. It is a central teaching, yes.

Mr. Armey. I thought so and I don't mean here to take exception with that.

Reverend Hehir. All right.

Mr. Armey. It is your right to practice your faith as you see it. Would you be disturbed to face the possibility that the Catholic church or any organization, program or practice of the Catholic church may be denied its tax exempt status for practicing this religious faith?

Reverend Hehir. Well, I think that is why we have asked that that be addressed under the religious tenet question.

Mr. Armey. So what you are asking is for a religious tenet that protects religious beliefs?

Reverend Hehir. We are asking for the religious tenet provision in the legislation because we support the basic principle of the legislation—that institutions receiving Federal funds should not discriminate and that they should be held to that.

I could say in passing that the U.S. Catholic Conference on the earlier question does not take exception to the idea of direct or indirect. We have not taken exception to that. We support that principle and, then, the religious tenet provision is to make sure that in practice in the internal polity of the institution we are not forced to act against our religious belief.

Mr. Armey. Well, certainly as a theologian I can understand that it would be very critical to you that we protect religious freedoms and religious liberties.

Reverend Hehir. Actually, both principles are crucial. As a theologian, I am very concerned that we also protect against discrimination in the society. That also is equally fundamental.

Mr. Armey. Again, as a political scientist, I'm sure you are concerned about other liberties, other beliefs and faiths, and the freedom of those.

Reverend **Hehir**. I'm concerned about a range of political, civil and economic and social liberties.

Mr. **Armey**. And I'm concerned that you're asking here—and you can see so clearly the problem and the threat that is posed to the theological belief or the religious belief—the intrusion of the Government and the withdrawl of privilege by the Government if there is, let's say, a peculiar religious faith involved.

Reverend **Hehir**. Well, I guess I just may not understand the line of argumentation in the sense that it——

Mr. **Armey**. I perceive that you are playing favorites with liberties here.

Reverend **Hehir**. No, I don't think I am at all. I think that I'm holding my own across the board.

Mr. **Armey**. Well, it seems that way to me. I certainly don't want to discourage your efforts because religious liberty is very important.

Reverend **Hehir**. It is one of several that we are interested in.

Mr. **Armey**. I might make the observation that all parties here today have expressed a great deal of commitment to individual freedom and liberty. All parties have.

I think you should very seriously consider the fact that, if this bill is passed, indeed the kind of scenario that I just suggested to you is a very real possibility. As you may know, there are a variety of organizations in America today that are not particularly sympathetic to your religious belief regarding priesthood for women and this bill would give them an avenue to access you.

Reverend **Hehir**. Our general counsel reviewed this legislation quite closely and that notion was not raised as a major point, so I'm really sort of standing on our legal analysis.

Mr. **Armey**. And you're prepared and happy to take that chance?

Reverend **Hehir**. Well, as I say, when I'm in the lawyers field, I listen to the lawyers.

Mr. **Armey**. Mr. Hafen, I attended as an undergraduate one of your member schools. I taught in another one and I'm familiar with a great many of them. I have always seen a commitment to individual freedom. In fact, that's what the school is there for—for the commitment to individuality.

Is there any reason why or what would be the reasons why an organization of yours, with 165 extremely reputable private schools, would want to oppose this legislation? What would be the particular reason?

Mr. **Hafen**. I've outlined in my testimony the general answer to that question, Mr. Armey.

I guess the point I'd like to make to respond to something that may have been left a little unclear earlier is the vast majority of the schools in the association that Father Byron represents today receive all kinds of Federal assistance, not just student aid. For that reason, the issue of Federal aid to students isn't nearly the issue for them that it is for the schools I represent. As I mentioned earlier, about 60 percent of our schools have for years refused Federal aid even though it would have been of great financial benefit to them. They refused it in order to pursue individually defined missions, many of which were church related. So the very same reasons that motivate the Catholic Conference to be concerned about religious liberty have motivated our schools similarly. That is what causes the concern about student aid. If that religious exemption is not broadened, there is a very large problem.

Mr. **Armey**. Well let me ask you this. Are you confident that, should this bill pass, your member institutions will be free to simply announce a policy that they will not accept students who benefit from Federal financial aid and, having made that announcement, be free from the threat of litigation for violation of student civil rights?

Mr. **Hafen**. That is correct. As I mentioned, one of our member schools has already made that announcement, which means that the students who need financial aid to go to college can't go to that school.

Mr. **Armey**. Do you believe that Grove City College, after the passage of this bill, will once again find itself in confrontation with an agency of the Federal Government for having violated the civil rights of a student by refusing admission to students who receive Federal funds?

Mr. **Hafen**. That day would not surprise me, but it wouldn't happen under this bill.

Mr. **Armey**. It would not happen under this bill?

Mr. **Hafen**. As far as I know, it wouldn't.

Mr. **Armey**. I see no reason why not. The question that bothers me a great deal is how far indirect benefit goes. Now, you are all scholars and you are all academicians and lawyers. How far can that go? If a family receives Federal subsidies for a disabled father and sends their child to a school, does that allow the intrusion of the Government to compel a compliance, *ex ante,* before any charge has been made to prove their innocence? Maybe I should address to our lawyer.

Mr. **Kapp**. I guess I wouldn't think that it would—that it would be far too indirect for that purpose. There is a difference between that kind of assistance, it seems to me, and Pell grant assistance which is, as I understand it, the most significant factor in Federal education assistance. The very purpose of providing Pell grants—at least one of the purposes of providing Pell grants is to assist the institutions. I don't think that would be true in the case that you have posed.

Mr. **Armey**. But there is no specific language that places a limit here. The one thing about *Grove City* that I felt was good—and I can tell you that I am by no means happy about that decision either, but the one good thing was that it drew a line. I see no line drawn by this bill. I see the line wide open again. I am disturbed by the word "extended." I might ask you for your interpretation. I see this as a case where if indeed a Government agency informs Grove City College that students who receive financial aid are entitled to attend there, they have extended grant and that leaves them not free to deny admission to students on that ground.

Mr. **Kapp**. I guess I would disagree with that for much the same reasons as—I believe it was Marilyn Rose, a prior witness, identified in the past panel.

Mr. **Armey**. Could you explain to me why you would disagree with that?

Mr. KAPP. I disagree with that because I think that the legislation assumes a recipient of Federal aid and I don't think that the extension of aid—or, the offer, whatever that may be that's not accepted, would constitute —would put one in the position of being a recipient of aid.

Mr. ARMEY. But, as a lawyer, certainly you're not willing to live in a world of legislation and laws where critical issues are resolved only by what somebody's guess is about the assumption of the lawmaker with respect to the meaning of critical language.

Mr. KAPP. I don't find the issue that difficult in reality. I.don't think that that's what anybody believes is intended. I think people are looking to recipients of Federal assistance.

Mr. ARMEY. Well, let me play the devil's advocate.

Mr. HAYES. Would you be conscious of the 5-minute time rule which has already been extended beyond the stretching point?

Mr. ARMEY. If I may, one more.

Mr. HAYES. All right. Go ahead.

Mr. ARMEY. We have heard a great deal of testimony that, although we all agree that America is staffed by people of good intention and good heart, there are some among us who would be insensitive enough to violate the rights of another person. Isn't it true and possible that there may be some who are so zealous in their pursuit of equal rights that they may indeed bring charges that really constitute nothing other than harassment, which I think the *Grove City* case was; and isn't that just as great a danger to our liberty?

Mr. KAPP. I think there are always dangers that people will do peculiar things, but I don't think that there is anything in this legislation which would be designed for that purpose or which would likely have that effect.

Mr. ARMEY. Nor prohibit it nor prevent it. And I thank you for your patience, Mr. Chairman.

Mr. HAYES. Mr. DeWine?

Mr. DEWINE. Thank you, Mr. Chairman. Father Hehir, I have a question for you. On page 5 of your testimony you state:

> The effect of extending coverage of Title IX will inevitably mean the extension of regulations, finalized in 1975, which require that termination of pregnancy be treated the same as other disabilities in student and employee health and benefit programs.

Understanding you're not an attorney, what I am looking for is a legal explanation of this statement and exactly what you mean and how you got there. I would invite your counsel speak directly if he could.

Reverend HEHIR. OK, but let me indicate in layman's terms what I think it is and Mr. Liekweg—I would appreciate his assistance.

As you know, title IX was passed in 1972 and, then, in 1973 we had *Roe* v. *Wade*. Our understanding is. in the regulations that interpret title IX, that termination of pregnancy is to be treated as other forms of health problems.

Therefore, since we see H.R. 700 as extending title IX to some degree, and given the bishops' position on abortion, they wanted to raise up and specifically raise the point that I'm trying to make here—that the extension of that in the regulations gives us the opportunity to come forward and argue against an interpretation of those regulations which in fact treats termination of pregnancy as any other form of health difficulty and requires coverage.

Now, let me ask the general counsel whether I have just distorted the testimony.

I think, Congressman, that this amendment and this paragraph would have to be seen in light of the broader position of the Catholic bishops in opposing *Roe* v. WADE in terms of its substance and its extension in society.

Mr. DEWINE. I fully understand that. I guess what I am trying to get at is that these regulations, unfortunately from my perspective, are in place.

Reverend HEHIR. Yes, that's right.

Mr. DEWINE. The question I am trying to get at is how would this legislation specifically extend and maybe you can give me some examples.

Reverend HEHIR. All right. There, I am going to turn to my counsel.

Mr. LIEKWEG. Thank you. For the record, I am John Liekweg and I'm assistant general counsel.

We arrived at our conclusion by simply looking at *Grove City* and the way the Supreme Court interpreted the term "program." That is the state of the law at this point in time. The regulations to programs as that has been interpreted by the Supreme Court.

Any bill and specifically this H.R. 700 that expands the scope of coverage or expands the definition of program would inevitably expand the realm of things to which the regulations apply. In other words, "program" is defined narrowly now by the Supreme Court decision. Under H.R. 700 it would be broader than what the Supreme Court decision has held. So, the regulations that are in place now would necessarily apply to more things than the state of the law as it exists now.

Mr. DEWINE. Can you give me some examples?

Mr. LIEKWEG. If you take the case of *Grove City*, you have got the regulations applying only to the student aid program, the financial aid office of the university. Under H.R. 700—let me back up—and not applying to, say, health benefit programs of employees at Grove City or employees of Grove City. With H.R. 700, a college in Grove City's position, all of its operations would be subject to coverage under the title IX regulations. Therefore, the regulations that apply to employee health benefit programs requiring similar treatment between termination of abortion and other medical disabilities would necessarily apply to the employee benefit programs of the college.

Mr. DEWINE. Let me give you an example and see if you can comment on it. Let's say General Motors—or pick any corporation you want—is running some sort of educational program and let's say they come under title IX.

Does that mean General Motors would have to provide in their health care plan corporationwide abortion coverage?

Mr. LIEKWEG. Under the current regulations and under the current state of the law, without H.R. 700, I think the effect of the regulations would be limited to the education program that General Motors is operating. With H.R. 700, as I read it, all the operations of General Motors or whatever the subsidiary or corporation is that's involved would be covered. So, therefore, the entire employee benefit would be subject to coverage under the regulations.

Reverend HEHIR. Congressman, if I could make a point, I think this is probably presupposed by you, but I want to make it clear. Our testimony is supporting institutionwide coverage and that is precisely why, in giving support to institutionwide coverage and in seeing the possibility that that would be understood as extending abortion as an implication of that, we wanted to raise this up explicitly. I wanted to be clear on the institutionwide coverage. We come before the committee supporting that principle.

Mr. DEWINE. But certainly not supporting that implication?

Reverend HEHIR. That's right. And that's why we felt it was necessary to go to the specificity of an amendment on this question. That's right.

Mr. DEWINE. I appreciate the testimony from both of you. I think it clears up the question. It shows on this specific issue some of the results that may not have been intended which a lot of people in this Congress would never support if they went in with their eyes open. I agree and I think an amendment is in order and I hope that we can take care of that.

Reverend HEHIR. The point, I think, that would come out of our testimony is that, as I said in the final paragraph, we find very many positive things in this legislation.

Mr. DEWINE. Father, you are on record as being positive about this.

Reverend HEHIR. Well, I don't want any doubts about that one.

Mr. DEWINE. Believe me, I understand that. I have read many of your positions on a lot of issues and I know that you are fully in favor of this particular one. I'm just glad today you brought up the abortion question.

Reverend HEHIR. Yes, that's right. And we wanted to do it in a very specific way.

Mr. DEWINE. Sometimes I wish you would emphasize it a little more and I'm glad you did that today. Thank you.

Reverend HEHIR. I can see you have been reading the press.

Mr. DEWINE. No, I have been reading you, Father. I appreciate it. I do want to say that I think both of you gave testimony that is very helpful to us today. I do not mean to be sarcastic here. I appreciate it and I think it has helped us very much.

Reverend HEHIR. Thank you. I just wanted to keep it all before you.

Mr. DEWINE. Thank you, Mr. Chairman.

Mr. HAYES. This concludes the final panel that was scheduled to appear before our joint hearing of the Committee on Education and Labor and the Subcommittee on Civil and Constitutional Rights of the Judiciary Committee of the House of Representatives.

I want to express the committee's appreciation for your appearance and the content that you placed into the hearing itself.

I realize that you have raised some issues which our chairman has suggested that will be looked into by way of considering whether or not we can revise the currently proposed H.R. 700 to accomodate the concerns that you raised.

I want to say that your statements have been profound and clear and I am sure that the committee appreciates the manner in which you presented them.

This concludes the hearing for today. Thank you very much for appearing.

[Whereupon, at 3:38 p.m., the committee and subcommittee was adjourned.]

CIVIL RIGHTS RESTORATION ACT OF 1985

THURSDAY, MARCH 28, 1985

House of Representatives, Committee on Education and Labor, and Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary,
Washington, DC.

The committee and the subcommittee met, pursuant to call, at 9:30 a.m., in room 2175, Rayburn House Office Building, Hon. Donald Edwards (chairman of the subcommittee) presiding.

Present for Committee on Education and Labor: Representatives Hawkins, Williams, Martinez, Owens, Hayes, Bruce, Penny, Jeffords, Petri, Gunderson, Bartlett, McKernan, Armey, and Fawell.

Present for Subcommittee on Civil and Constitutional Rights: Representatives Edwards, Conyers, Sensenbrenner, DeWine, and Dannemeyer.

Staff present for Education and Labor: Edmund D. Cooke, Jr., counsel and Karen Vagley, associate counsel, Rose DiNapoli, minority legislative associate.

Staff present for Civil and Constitutional Rights: Ivy L. Davis, assistant counsel and Phil Kiko, associate counsel.

Mr. Edwards. The committee and the subcommittee will come to order.

Today marks the conclusion of joint hearings conducted by the House Judiciary Subcommittee on Civil and Constitutional Rights and the Committee on Education and Labor.

These hearings, which began on March 4, have taken us to Philadelphia, Atlanta, Chicago, Los Angeles and Santa Fe. In addition, we have heard testimony in Washington, DC, on three separate occasions, and I thank all of my colleagues from the two committees who have participated in these hearings.

And I believe I speak for all my colleagues in expressing a warm appreciation to the witnesses who have shared with us their views of H.R. 700. These collegial hearings have been thorough and were designed to solicit a better understanding of the impact of this legislation.

At the conclusion of these eight hearings, the record demonstrates that there is a continued need for these four laws. Most importantly, these hearings have established that the Dole bill, the so-called administration-supported bill, is wholly inadequate because it would not reach the discrimination which these committees found occurs outside educational institutions.

Even the Assistant Attorney General for Civil Rights, Mr. Reynolds, acknowledged that courts interpreting a noneducation discrimination claim would undoubtedly reach the same narrow application found in the *Grove City* ruling.

Congress must, therefore, take corrective action now.

As we conclude these hearings, I'm confident that H.R. 700 restores the institutionwide coverage of pre-*Grove City* executive branch enforcement. To those entities which seek to avoid coverage of these laws, a solution is simple. They can refuse to accept Federal financial assistance. So, there is a simple solution.

And to those entities which do accept Federal financial assistance, there is but one condition. The entity must conduct all of its operations in a nondiscriminatory manner.

I yield to the chairman of the Education and Labor Committee, Mr. Hawkins.

The CHAIRMAN. I have no comment at this time.

Mr. EDWARDS. Thank you, Mr. Hawkins.

The first panel today, we are honored to have the president of the National Education Association, Mary Hatwood-Futrell, and Ms. Muriel Cantor, representing the American Association of University Professors.

Ms. Futrell, you are first, and will you introduce your colleague, and you may proceed.

STATEMENT OF MARY HATWOOD FUTRELL, PRESIDENT, NATIONAL EDUCATION ASSOCIATION, ACCOMPANIED BY LINDA TARR-WHELAN, DIRECTOR, GOVERNMENT RELATIONS DIVISION, NATIONAL EDUCATION ASSOCIATION

Ms. FUTRELL. Thank you very much, Chairman Edwards and Chairman Hawkins.

I am Mary Hatwood-Futrell, the president of the National Education Association. And with me today is Linda Tarr-Whelan, who is the director of the NEA's Government Relations Division.

The attacks on civil rights in recent years make it imperative for me, as president of NEA's 1.7 million members, to reiterate that our association has a long-time and strong commitment to civil rights.

No matter how the political winds blow in this Nation today, we shall not shrink from that posture. We believe that equality of opportunity is an essential element in the quest for educational excellence, and stand firm in our opposition to efforts that would erode our limited but important past civil rights gains.

We will continue to fight for those principles which are the very essence of this Nation's goals of fairness and equity.

Our members, by association resolution and action, have time and again supported civil rights laws and protections whether in matters of education or other arenas of national life, and sought to extend opportunity to all members of our society, regardless of sex, race, national origin, physical disability, or age.

We strongly urge Members of this Congress to join us in reaffirming support for civil rights protections by moving swiftly to pass H.R. 700, the Civil Rights Restoration Act of 1985.

This legislation which enjoys broad bipartisan support and has been cosponsored by almost 190 Members of the House is essential to restore the basic safeguards provided by past law.

Until the 1984 Supreme Court case of *Grove City* v. *Bell*, based on title IX of the Education Amendments of 1972, the coverage of that statute and other major civil rights protections was clear.

If an institution or agency received Federal funds, discrimination was prohibited through the entire entity, whether in relation to title IX, title VI of the 1964 Civil Rights Act, section 504 of the Rehabilitation Act, or the Age Discrimination Act.

NEA members know first-hand the effects of that court decision. They have been among those who have filed discrimination complaints, incidents that have run the full range of potential claims under all four civil rights statutes.

Their complaints are our greatest indicators of the need for continued civil rights protection. Enactment of the Civil Rights Restoration Act is critical to restore protections against discrimination on the basis of sex, race, national origin, physical disability, and age.

The reason? The U.S. Department of Justice has indicated that it is applying the same interpretation to other major civil rights laws as it is to title IX. The *Grove City* issue is not just an education matter, but rather a major civil rights issue.

Fundamental guarantees are in jeopardy. H.R. 700 is a comprehensive yet measured approach to correct this tragic situation.

While Senator Dole has introduced his own legislation, S. 272, on this issue, his bill restores the law only for certain beneficiaries of Federal aid, and only educational institutions. It leaves millions of others subject to discrimination. This is unacceptable in our opinion.

Each of the major civil rights laws must be fully restored to pre-*Grove City* status.

Students, elementary and secondary education personnel, college leaders in 165 national religious, labor, civil rights, senior citizen, women's groups, and educational organizations form the bipartisan support for H.R. 700.

These major civil rights statutes are important to American lives. They have made a difference.

Title IX of the 1972 Education Amendments open the doors to educational study, employment opportunities and athletics for girls and women.

The Civil Rights Act of 1964 broke the back of Jim Crow in American society. It has been the protection against school employment, housing discrimination as well as the safeguard against segregated public facilities.

Section 504 of the Rehabilitation Act has meant that many Americans, including school employees and students, no longer face artificial barriers to their participation and advancement in our society.

The Age Discrimination Act has opened opportunities for Americans through the span of life. Yet, all of these statutes now stand in jeopardy. We must not allow those who conspire to turn back the clock to the days when discrimination was acceptable, by government law as well as by social practice, to succeed. That would poison the future of today's school children and limit their abilities to develop to their fullest potential.

For this Nation, which already has paid too high a price for past inequities, that would be a tragedy.

It is imperative that the Civil Rights Restoration Act of 1985 be enacted into law at the soonest possible time. Thank you very much.

[Prepared statement of Mary Hatwood-Futrell follows:]

PREPARED STATEMENT OF MARY HATWOOD FUTRELL, PRESIDENT, NATIONAL EDUCATION ASSOCIATION

Mr. Chairman: my name is Mary Hatwood Futrell, President of the 1.7 million member National Education Association (NEA) whose members are classroom teachers, educational support personnel, and higher education faculty in each of the 50 states.

It is with deep regret that it is necessary for me to come before you again to speak on a matter once thought settled. Many of us had thought this nation had moved significantly away from the clutches of discrimination, but instead we are disturbed to find ourselves in the position of refighting old battles. Instead of moving forward on matters of civil rights, we are diverted by those who conspire to drive us back to the darker periods of this nation's history.

Some voices now ask Congress to abandon support for civil rights matters. They claim that somehow the protections enacted years ago are no longer necessary, and that unbelievably, the law has had too broad a reach and must now be curtailed. Those voices must not and will not go unchallenged.

I am here today to reiterate to you NEA's strong, historic commitment to civil rights for those in our society who are placed at a disadvantage because of sex, race, national origin, physical disability, or age.

We believe that equality of opportunity is an essential element in the quest for educational excellence. Like millions of other Americans who believe in equity, NEA members stand firm in our opposition to efforts that would erode our limited but important past gains. We will continue to fight for those principles which are the very essence of this nation's being: an unwavering dedication to fundamental fairness and equality.

Our members—by Association resolution and action—have time and again supported civil rights laws and protections, whether in matters of education or other arenas of national life, and sought to extend opportunity to all members of our society. We will not shrink from that posture.

We strongly urge Members of this Congress to join us in reaffirming support for civil rights protections by moving swiftly to pass H.R. 700—the Civil Rights Resotoration Act of 1985. This legislation—which enjoys broad bipartisan support and has been cosponsored by almost 190 Members of the House—is essential to restore the basic safeguards provided by past law.

THE IMPACT OF GROVE CITY

Until the 1984 Supreme Court case of *Grove City* v. *Bell* based on Title IX of the Education Amendments of 1972, the coverage of that statute and other major civil rights protections was clear. If an institution or agency received federal funds, discrimination was prohibited throughout the entire entity—whether in relation to Title IX, Title VI of the 1964 Civil Rights Act, Section 504 of the Rehabilitation Act, or the Age Discrimination Act. And whether Democratic or Republican, every Administration implementing those laws followed that interpretation until now.

But the Supreme Court's *Grove City* ruling in one stroke set the civil rights movement back two decades, narrowing the coverage of Title IX to only the specific program or activity receiving federal funds—not the entire institution. The result of that ruling was simple: the federal government could legally subsidize discrimination. Its effects were immediate. On the same day, the Supreme Court's limited interpretation of Title IX was applied to a Section 504 case, *Consolidated Rail* v. *Darrone.* The U.S. Department of Education put on hold or closed some 63 complaints pending in the Office for Civil Rights.

NEA members know first hand the impact of *Grove City*. While we do not keep centralized records of such occurrences, over the years our members have contacted us for assistance and advice on discrimination incidents and complaints. These incidents run the full range of potential claims under all four civil rights statutes. We also are involved in litigation on some of these.

THE CIVIL RIGHTS RESTORATION ACT

Enactment of the Civil Rights Restoration Act is critical to restore protections against discrimination on the basis of sex, race, national origin, physical disability, and age. The reason? The U.S. Department of Justice has indicated that it is applying the same interpretation to other major civil rights laws as it is to Title IX. The *Grove City* issue is not just an education matter, but rather a major civil rights issue. Fundamental guarantees are in jeopardy. H.R. 700 is a comprehensive yet measured approach to correct this tragic situation. Yet there are those who would stand in the way of restoring these historic safeguards.

In an attempt to undermine support for the bill, those opposed to H.R. 700 have made false claims about its scope and effect. Let there be no mistake: the Civil Rights Restoration Act of 1985, as its name applies, does not expand coverage of the four major civil rights laws. It merely restores these basic civil rights statutes to their pre-*Grove City* status.

The legislation before you today represents an honest attempt to deal with concerns raised over last year's civil rights measure, but it does not broaden the laws in any way.

- Those who were not previously deemed recipients under past civil rights statutes would not be recipients after passage of the Civil Rights Restoration Act. No exceptions from past coverage are allowed under this bill, nor are any additions made.
- Exemptions for religiously controlled institutions under Title IX remain unchanged by H.R. 700.
- The bill also includes the same pinpointed approach to termination of federal funding for those found to be in violation of the law. Fund termination will continue to be utilized as a last resort after efforts to achieve voluntary compliance have failed. Yet it is important to note that no fund termination has ever occurred during the life of Title IX.
- Other enforcement provisions remain unchanged. Funding agencies will continue to have the option of securing enforcement through referral to the Department of Justice. The right of individuals to sue privately also remains the same. It is critical, Mr. Chairman, that these parameters be understood.

H.R. 700 sets out the institutionwide coverage which was the purpose of last year's bill passed overwhelmingly in the House. This bill amends all four statutes in exactly the same way. But to clarify last year's measure, we have sought definition of the term 'program or activity' so that there will be no mistake about its intent in the future—federal dollars shall not subsidize discrimination in any institution receiving support for any or all of its programs of activities.

THE NECESSITY OF COMPREHENSIVE COVERAGE

While Senator Robert Dole has introduced his own legislation (S. 272) on this issue, it does not address the problem fully. It restores the law only for certain beneficiaries of federal aid and only educational institutions. It leaves millions of others subject to discrimination. This is simply unacceptable. Each of the major civil rights laws must be fully restored to its pre-*Grove City* status.

The strong bipartisan backing for this legislation in Congress reflects the broad-based support of students, elementary and secondary education personnel, and college leaders who also seek its passage. The breadth of this support is further indicated by a coalition of over 165 national religious, labor, civil rights, senior citizen, women's groups, and education organizations.

The importance of major civil rights laws is evident in the gains made since their passage.

Since Title IX was passed in 1972, for example, the number of women participating in intercollegiate athletics has increased twofold; the number of women in vocational education has multiplied; 15,000 athletic scholarships have gone to women since 1972; women are making headway in graduate and professional college degrees in traditionally male fields. This, Mr. Chairman, is a law that has made a substantial difference in the lives of women and girls. It is a law that has had positive impact on our entire society.

While this is progress, Mr. Chairman, it is not fulfillment.

Women are underrepresented in all higher faculty ranks at both private and public institutions of higher education. Women have not made great inroads into postgraduate study in the physical sciences. Women's athletic programs are still underfunded as contrasted to total institution athletic programs. We have made gains, but we have not yet won the battle.

The Civil Rights Act of 1964 broke the back of Jim Crow in American society. Title VI has been the primacy vehicle for desegregation of schools, hospitals, public systems of higher education, agricultural extension services, social service agencies, and public housing. It opened movie theaters, restaurants, and other public places. Employment discrimination against minorities and women in the private sector was banned under Title VII. The Act has prohibited racial discrimination by recipients of federal financial assistance—until now.

Section 504 of the Rehabilitation Act has meant that many Americans—including school employees and students—no longer face artificial barriers to their participation and advancement in our society. Disabled individuals have made great strides in education in the last decade; their numbers as students have increased tremendously at schools and institutions of higher education. The elimination of physical and legal barriers has opened the doors not only to education but also to employment, to housing, and to medical services for this segment or our population.

The Age Discrimination Act has opened opportunities for Americans through the span of life. That these protections were important to this part of our society is evident in the complaints filed since then. Sadly, the majority of those complaints have been educational in nature and cite denials of admission to colleges and universities. Other cases have related to health services, housing, and the denial of food stamps and access to rehabilitation programs.

Yet all of these statutes now stand in jeopardy.

We must not allow those who conspire to turn back the clock to the days when discrimination was acceptable—by government law as well as by social practice—to succeed. That would poison the future of today's school children and limit their abilities to develop to their fullest potential. For this nation, which already has paid too high a price for past inequities, that would be a tragedy.

It is imperative that the Civil Rights Restoration Act of 1985 be enacted into law at the soonest possible time.

Thank you.

Mr. EDWARDS. Thank you, Ms. Futrell.

Our next member of the panel to testify is Ms. Muriel Cantor, representing the American Association of University Professors.

Before you begin your testimony, we welcome the ranking minority member of the Education and Labor Committee, the gentleman from Vermont, Mr. Jeffords.

Mr. JEFFORDS. Thank you, Mr. Chairman. It's a pleasure to be here, and I'm enjoying the testimony and look forward to this morning. Thank you.

Mr. EDWARDS. Thank you. Ms. Cantor?

STATEMENT OF MURIEL CANTOR, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, ACCOMPANIED BY DR. LESLIE FRANCIS, COMMITTEE ON STATUS OF WOMEN IN THE ACADEMIC PROFESSION, AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

Ms. CANTOR. Thank you.

Mr. Chairman, members of the committee, I'm Muriel Cantor. I am a professor of sociology at American University, and I thank you for inviting me to testify.

I am here today representing the 80,000 members of the American Association of University Professors, which is the oldest and largest professional association exclusively representing college and university faculty members.

I am accompanied by Dr. Leslie Francis, who staffs the association's Committee on the Status of Women in the Academic Profession.

I am honored to be a member of that committee, which was created by the association in 1918. While I have a larger statement, which I hope you will enter into the hearing record, I would like to emphasize three points today very briefly.

First, our association enthusiastically endorses H.R. 700. This legislation would restore the broad scope and coverage of title IX, as well as other civil rights statutes that existed prior to the Supreme Court decision in the *Grove City College* v. *Bell*.

Title IX was a milestone in the movement toward elimination of sex discrimination in higher education. It created a new environment conducive to the efforts that our association and others in the higher education community undertook in the 1960's, 1970's and 1980's, to remove those obstacles to equality that have confronted us for almost three-quarters of a century.

During the 1970's, antinepotism regulations were repealed. Job opportunities for women opened up. Salary inequities were examined, procedures for handling complaints of sexual discrimination were adopted, affirmative action plans were implemented, and long standing issues, such as sexual harassment, were confronted on the campuses.

Second, while there has been extraordinary progress since 1972, there remains a series of unresolved problems. These include the underrepresentation of women among faculty, and the continuing matter of differential in salaries between men and women faculty.

In our statement, the longer one, we point to the slight rise in the percentage of women among faculty since 1974. There has been an increase from 22 percent to 25 percent, but there is also a growing differential in salaries from 4.6 percent in 1974, to 7.8 in 1984. The latter can only be partially explained by the increasing number of faculty who are at the lower ranks.

We believe that the enactment of H.R. 700 would provide an incentive for institutions to continue their efforts to resolve these and other outstanding problems.

Third, we reject the theory established in the Supreme Court's decision that title IX was relevant only to individual programs rather than to institutionwide coverage.

Our association endorsed title IX in 1972, and supported the issuance of the initial regulations for its implementation. We understood then, and continue to believe, that title IX and the accompanying regulations affects the entire institution.

Our view of the university has been one of long standing support for institutionwide policies. Academic tenure is adopted at the institutional level, not at the departmental level.

Faculty senates prepare and recommend institutionwide governance policy. Faculty participate frequently through an elected faculty representative committee, in preparation of total institutional budgets.

I thank you for the opportunity to testify on this significant legislation, and welcome any questions you may have. Thank you, again.

[The prepared statement of Muriel G. Cantor follows:]

PREPARED STATEMENT OF PROF. MURIEL G. CANTOR, PROFESSOR OF SOCIOLOGY, AMERICAN UNIVERSITY, ON BEHALF OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

Mr. Chairman and Members of the Committee, I am Muriel G. Cantor, professor of sociology at American University of Washington, D.C. I am appearing today on behalf of the American Association of University Professors, the nation's oldest and largest organization exclusively representing college and university faculty members.

The American Association of University Professors strongly supports H.R. 700, the Civil Rights Restoration Act of 1985. This bill would restore the broad scope and coverage of Title IX of the Education Amendments of 1972, as well as three other civil rights statutes, that existed prior to the Supreme Court's *Grove City College* v.

Bell decision. H.R. 700 affirms that Title IX should be applied broadly to eliminate gender discrimination throughout the American educational system.

From its founding in 1915 the American Association of University Professors has sought to maintain an atmosphere in which academic freedom would be protected and sustained. The Association has recognized that academic freedom cannot exist where fundamental human freedoms are denied, and it has therefore consistently urged full and fair enforcement of federal equal opportunity laws and institutional compliance with Title IX. We are gravely concerned that the *Grove City* decision will adversely affect the scope of equity legislation in general and thus contribute to discrimination against minorities, women, the handicapped, and the elderly.

Our Association has been committed to eliminating sex discrimination in higher education since its founding in 1915. Our Committee on the Status of Women in the Academic Profession was established in 1918. The scarcity of faculty during World War I and the expansion of American higher education in the post war period offered opportunities for women to enter college teaching. The suffrage movement included many women faculty and undoubtedly the success of the movement helped to contribute to the new role of women in academe. But the problems of underrepresentation of women among faculty and salary inequities, which were noted and commented upon in this early period, have persisted to the present time. In 1974 the percentage of women employed as full-time faculty was 22% and that figure had risen only to 25% by 1984. In 1974, when our annual faculty salary survey first included differentials between men and women, there was a 4.6% overall differential in salaries. By 1984, partially because of the increase of women at the lower ranks, that differential had increased to 7.8%

Mr. Chairman, we believe that Title IX has contributed immeasurably to helping eliminate sex discrimination in higher education. One can too easily forget that, prior to the 1970's, sex discrimination in academe was commonplace. Moreover, the major anti-discrimination laws of the 1960's did not apply to women faculty. The Equal Pay Act of 1963 specifically excluded women in executive, professional, and administrative positions. The Equal Opportunity Act of 1964 excluded all public employees and faculty of private educational institutions. Until the 1970's, women faculty who experienced discrimination could expect no redress from federal and state agencies or the courts.

In 1972, in response to increasing pressure and publicity, three major legislative developments occurred. The Equal Employment Opportunity Act of 1972 extended coverage of the Civil Rights Act of 1964 to women in educational institutions and to employees of state and local governments. Title IX of the Education Amendments of 1972 prohibited discrimination against female students in admission and services and, by implication, forbade employment discrimination. In addition, the same law amended the Equal Pay Act to extend coverage to women professionals.

These laws accelerated the drive towards equality in higher education. The American Association of University Professors is proud to have played a role in this movement. During the 1970's the Association developed a series of policy statements and recommended institutional regulations that reflected our desire to eliminate sex discrimination from higher education. Specifically, we developed: (1) institutional procedures for handling complaints of discrimination on the basis of sex; (2) a statement on the role of affirmative action in the elimination of discriminatory practices in academic recruiting, appointments, and advancement; (3) a statement on recommended procedures for designing and implementing affirmative action plans; (4) a statement on recommended institutional policy and procedures for handling complaints of sexual harassment; and (5) a statement on faculty appointments and family relationships. During this period the Association was successful in obtaining the repeal of antinepotism regulations on campuses. The Association also prepared a higher education salary evaluation kit, which was designed to target possible salary inequities for women and minority faculty. In 1972 the Association endorsed the passage of Title IX and joined those in higher education, Congress, and the civil rights groups who wanted the regulations for Title XI issued as quickly as possible. In 1974 the Association went on record in support of the applicability to, and the right of the Department of Education (then Health, Education, and Welfare) to enforce anti-discrimination statutes at all accredited colleges and universities. As we review the work of our Association throughout the 1970's and to the present, it is clear that the acceleration of our efforts to eliminate sex discrimination reflected the incentives provided by the changes in federal legislation that occurred in 1972.

More recently the Association's National Council approved a resolution endorsing a broad interpretation of the anti-discrimination statutes. In opposing a program-specific interpretation of Title IX, the Council noted that federal funds provided for one institutional program contribute to the institution's entire operating budget.

The Council's statement reflects the Association's longstanding support for institution-wide policies. Academic tenure is granted at an institution-wide level, not at a departmental level. Faculty senates prepare and recommend institution-wide governance policies. Faculty participate, frequently through an elected faculty representative committee, in the preparation of total institutional budgets.

Mr. Chairman, the Supreme Court's decision in *Grove City* erodes the progress made in the 1970's and 1980's. Without H.R. 700 the door is left open to further discrimination against women, minorities, the aged, and the handicapped. We have made substantial progress from the time when discrimination was a common and overt practice in higher education. We do not want to see those gains eroded. By passing H.R. 700 Congress will help ensure that our progress towards equality continues.

RESOLUTION ADOPTED BY THE NATIONAL COUNCIL

Whereas, the American Association of University Professors has repeatedly expressed its support of the goal of Title IX of the Education Amendments of 1972 that "No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving federal financial assistance";

Whereas, the language of Title IX has given rise to a series of questions (What did Congress mean by "program or activity"? Does it refer to a single program in an institution or the entire institution? What does "receiving federal financial assistance" mean? Should it be interpreted broadly to mean "receive" or "benefit," or more narrowly to cover direct assistance only?), such questions having been the focus of recent debate and litigation concerning Title IX and its applicability to colleges and universities;

Whereas, the U.S. Supreme Court, while concluding that no academic institution was exempt from the provisions of Title IX, ruled in favor of a program-specific interpretation in *Grove City College* v. *Bell,* holding that federal aid to students requires that only the financial aid program and not the entire institution be in compliance with the statute;

Whereas, the AAUP is concerned about the potential narrowing of the scope of Title IX as reflected in the Grove City College decision, and, realizing that the language of Title IX closely parallels that of Title VI of the 1964 Civil Rights Act, Section 504 of the 1973 Rehabilitation Act, and the 1975 Age Discrimination Act, is concerned that the recent ruling will adversely affect the scope of equity legislation in general and thus contribute to discrimination against minorities, women, the handicapped, and the elderly.

Whereas, the AAUP sought passage of the Civil Rights Act of 1984, which would have clarified the language and intent of Congress with regard to the anti-discrimination statutes, and expressed its disappointment when the bill was tabled by the Senate in the final hours of the second session of the 98th Congress;

Whereas, the AAUP, recognizing that federal funds provided for one institutional program contribute to the institution's entire operating budget (contribution acknowledged by the Supreme Court), opposes a program-specific interpretation of Title IX,

Be it resolved that the American Association of University Professors endorses and urges prompt passage of the Civil Rights Act of 1985, which, by reaffirming a broad interpretation of the anti-discrimination statutes, will help restore the effectiveness of Title IX and provide for a cut-off of federal funds to a college or university found to engage in improper discrimination.

Mr. EDWARDS. We thank both of the witnesses for excellent statements.

The gentleman from California, Mr. Hawkins, any questions?

The CHAIRMAN. Just one, if I may. I wish to commend both Ms. Cantor and Ms. Futrell for their very excellent testimony.

Ms. Futrell, may I ask you this rather broad, general question. The effect of the *Grove City* decision is very clearly outlined in the statement that you presented to the committee. That effect taken together with the current trend toward budget reductions in education with the lessening of opportunities for men and women alike, is going to have a serious impact on any progress that we have, in fact, made in reducing group conflicts, and easing the struggle between men and women. If you take these two occurrences together, and then face the threat of the *Grove City* decision it will simply mean that we will erode all of the progress that we have made toward bringing these groups together and reducing the conflicts. If H.R. 700 is not passed, then we can only look forward to reigniting those conflicts and tensions.

In other words, what I am asking you to do, which is probably a very difficult thing, is to look into the future and assume that H.R. 700 will not be passed, and describe what you believe will happen as a result of that inaction, on top of the dwindling opportunities that will result through the reductions in support for education.

Ms. FUTRELL. I think that your analysis is quite correct. And what we are dealing with is a double-edged sword. On the one hand, we are being told that the dollars will not be available for students, for instance, who would like to go to college, or for students who need special assistance, and on the other hand we are being told that you will be discriminated against because universities will now be able to say, unless this is overturned, the *Grove City* decision is overturned, that it is all right to discriminate against women or minorities or people who have a handicap or people who are aged.

I do not want to return to the way it was when I was growing up, when I went to school, when I did not have access to certain programs because I was a female, I did not have access to certain programs because I was a minority, and I did not have access because I was poor.

And I see us retreating from the whole issue of non-discrimination, from the whole issue of equity, to one where we are moving back toward the way it was when I was growing up in the 1940's and the 1950's, and I do not believe that that is what the people of America want. We have come too far to start going back.

And, so, I would say that we desperately need to overturn the *Grove City* decision. We desperately need to pass the resolution, or H.R. 700, and that if we pass H.R. 700, then that will restore us to where we were and help us to continue to move forward in a very positive manner, as opposed to moving backward in a negative manner, but I think that the budget cuts that we have seen so far have had a very serious impact on especially women and especially minority groups, as those groups try to impact the mainstream of our society.

The CHAIRMAN. Thank you. Thank you, Mr. Chairman.

Mr. EDWARDS. The gentleman from Vermont, Mr. Jeffords?

Mr. JEFFORDS. Thank you, Mr. Chairman.

This side of the aisle is very anxious to come out with a civil rights bill, and I am one of the original co-sponsors of the bill. We want to make sure, however, that we come out with a bill that will be able to make it through the Senate and be signed into law.

One of the questions—really, the only question I have for you—is, are you satisfied with the concept that this bill intends to have, and that is to restore the civil rights situation to where it was prior to *Grove City,* and to not necessarily go beyond that?

Ms. FUTRELL. Yes, I am satisfied. My basic concern, our basic concern is restoration to the situation we had before the *Grove City* case, and I think the bill will accomplish that.

Mr. **Jeffords**. Ms. Cantor?

Ms. **Cantor**. Well, I have to agree with her. I think that I would like to see, personally like to see widening civil rights coverage, but I also think that, as part of the academic community, that I would like to see also that the intention of both Senator Birch Bayh and Senator Claiborne Pell be carried out, and that this bill go back to the original intention, as I read it, of title IX and maybe the 1964 civil rights bill.

Mr. **Jeffords**. As it existed prior to *Grove City?*

Ms. **Cantor**. Right.

Mr. **Jeffords**. Thank you, Mr. Chairman.

Mr. **Edwards**. The gentleman from Michigan, Mr. Conyers.

Mr. **Conyers**. Thank you, Mr. Chairman.

I'm very glad to see Mary Futrell here again. I know her testimony was good.

I'd like to ask this panel only one question. Yesterday—I'm still reeling from a position that was new to me, made by the president of the American Association of Presidents of Independent Colleges and Universities, President Bruce Hafen of Brooks College, who presented me with the perfectly incredible notion that Pell grants and BEOG grants are indirect aid and should not trigger Federal jurisdiction. This blew my mind out of its socket. Only last week at Mary Grove College, a private institution in my district on Six Mile Road in Wyoming, about a mile from where I live, President Shea told me that 85 percent of his students were on some kind of Federal grant, and that if we didn't turn around the President's budget of a 27-percent cut in grants and student aid and a 16-percent cut in the Department of Education's budget, that that school, namely, Mary Grove, would no longer exist.

And so I would like to put that question to you leaders of the education field, for your discussion.

Ms. **Futrell**. Well, we have done an analysis of the various student financial aid programs that we have, and I would like to simply ask that the analysis which we have done be included in the record, but what we have determined is that, first of all, an institution must be certified to be eligible to receive, for instance, the Pell grants, and then, as part of our analysis, that the institution must sign a program participation agreement, which means that they are willingly accepting these funds from these students.

Further, in the Pell Grant Program, we have what we call the drawdown of funds from the Federal Government because they, in many instances, will receive the checks and they disperse them to the students, and the students are allowed to receive an administrative allowance as a result of the recipients using that program. So, they draw from not only the grant itself, but the administrative allowance that they get.

And so we would like to enter the analysis we've done into the record. I think that our analysis will respond much more directly to the concern that you have raised.

Mr. **Conyers**. Thank you very much.

Does anyone else want to comment on that?

Ms. **Cantor**. No.

Mr. **Conyers**. Well, OK. Then let me just say that I believe in private colleges. I support them. I think they are great, wonderful, necessary, important, but they can't have it both ways. If you want the Federal buck and you can't deny that Pell grants and BEOG and the loans are all going directly into that institution, maybe some student spends some small amount of it to eat or to buy clothes or to pay for his rent, but there seems to be this very cute approach about let's get the Federal buck to the maximum that we can, but let's also complain about the restraints of having to fill out forms and claim we don't discriminate when everybody knows we don't, and all of that.

I am getting tired of these colleges that want Federal money, but aren't even willing to make this minimum statement of cooperation that there will not be discrimination, something that they have been routinely doing all these years.

We didn't invent this necessity for this legislation, and it seems like we ought to repair it quickly and expeditiously. Lord knows, there are so many other problems that we need to conquer besides just patching up these holes in the dike.

I appreciate your continued leadership on the civil rights front that both of you have presented. And I yield to Chairman Hawkins.

The **Chairman**. Would the gentleman yield? I think it is important because the impression has been given, in the testimony to which Mr. Conyers referred, that student assistance, for example, a Pell grant, that goes to the student, in some way sets the student in one category, and the institution, to which the student goes, in another category.

Now, as I understand from the response which Ms. Futrell gave to Mr. Conyers, she has indicated there is a very intimate relationship between the grant and the institution itself, that administrative expenses, overhead, the hiring of a professor, et cetera, that all of this is involved in the process, and you can't just separate one from the other and say that the student goes to the Federal Government, gets this handout, uses it as a student wants to use it, and the institution is not, in any way, involved in the process.

Do I analyze the response correctly?

Ms. **Futrell**. Yes; and I think it is very clearly stated that Congress intended that student aid, including the Pell grants, would be an aid to the institution. And so, as a student who used aid when I went to the Virginia State College, the institution also used that aid because I paid it to them in order to get the education that I received, and they used it to maintain the facilities, for equipment, for textbooks, for professors. So, they were very directly involved in the utilization of those dollars.

The **Chairman**. Thank you very much.

Mr. **Conyers**. Good point. You know, just one quick comment. The reason a student is eligible for the Pell grant is that he is poor, not that he is just in line for some subsidy.

You've got to meet very definite criteria. You don't have the money to go to college. And that's how you get there. And that's why President Shea at Mary Grove said he will go out of business if the student loans don't keep flowing in because that's what they use to pay the tuition.

Mr. **Edwards**. The gentleman from Texas, Mr. Bartlett.

Mr. **Bartlett**. Thank you, Mr. Chairman.

Mr. Chairman, I believe the other gentleman from Texas, Mr. Armey, was here first, if he wants to go. He was here earlier.

Mr. **Edwards**. Well, we are not as orderly in the Judiciary Committee.

Mr. **Bartlett**. I didn't want to step on his toes.

Mr. **Edwards**. I think it's a very good rule that Mr. Hawkins has, but——

Mr. **Bartlett**. I'm prepared to go, though. Thank you, Mr. Chairman.

I appreciate the testimony of your two organizations. I have two questions, following up on the prior questions.

It seems to me that the essence of both H.R. 700 and the so-called Dole bill that has been introduced in the other body, although not in this one, is that Pell grants and other forms of Federal financial assistance that students use to go to college would, in fact, be deemed to be financial assistance, at least indirect financial assistance, to the college.

And so, as I understand it, under both bills then, that college would be deemed to be a recipient and, therefore, would be covered under these four statutes. So, while there may be some dispute, there doesn't seem to be a dispute between those two pieces of legislation.

My question is this. The *Grove City* case affected and addressed itself only to educational institutions. Grove City College is a single college. In the reading of the Supreme Court decision, the *Grove City* decision addressed only educational institutions and, in fact, only title IX, although it is well believed and I think correctly, that it would affect the other three statutes that deal with age, race and handicap.

Much of the controversy and the disagreement surrounding H.R. 700 seems to be in those other areas, or those other types of recipients which were not addressed in *Grove City,* and their definition of recipient was not changed by *Grove City*.

So, my question is, would each of you articulate your position as to whether you believe that there is a need to change the other types of institutions other than education. Since *Grove City* only changed the way we were doing things in educational institutions, would you perceive a need to make other changes and, if so, why? What is the problem we are trying to fix outside of educational institutions?

Ms. **Cantor**. Well, one of the things that I understood is that *Grove City*—one of the things we are trying to do is cover the total institution rather than just a program, and that in that respect, I think that there's really necessity for H.R. 700, and that this ought to apply to all other kinds of institutions that get Government funds, such as broadcasting, for example, or other things that are related to the public good.

And I would think that education is so much integrated into the larger structure, that one could hardly separate educational institutions from other kinds of institutions in the society.

Now, I don't know a lot about some of the business institutions, I have to admit that, but it would seem to me that one shouldn't be able to discriminate one place and not discriminate in another place.

Mr. **Bartlett**. I concur with you but the difficulty, of course, is that *Grove City* only directly applies to colleges and educational institutions. I don't believe that hospitals should be permitted to discriminate either, for example, or cities, but *Grove City* didn't discuss, didn't make any changes in law with regard to hospitals or cities or corporations.

Ms. Futrell?

Ms. **Cantor**. But couldn't the interpretation be that, in fact, that this would be applied then to other institutions?

Ms. **Futrell**. I think that that's exactly the concern that we have because the *Grove City* case, while the decision handed down by the Supreme Court dealt with education, the U.S. Department of Justice indicated that it will apply the interpretation to other major civil rights laws.

And so when the Justice Department made that statement, it brought other civil rights laws under the interpretation of the Supreme Court decision. And so we are very concerned not only about title IX, which was the issue before the Supreme Court, but also the Civil Rights Act of 1964. We are very concerned about section 504 of the Rehabilitation Act, as well as the Age Discrimination Act, and we have to go on the statement made by the Justice Department that they are going to bring those areas under that interpretation and, as a result thereof, we have included in H.R. 700 language which would cover all four.

Mr. **Bartlett**. Well, I think you are correct that there are two different questions that were hanging in last year's debate. One is whether the new bill would restore the civil rights laws, all four civil rights laws—race, age, sex and handicap—and the other one is whether there was a problem that needed to be fixed outside of educational institutions.

Now, the so-called Dole bill in the other body does provide coverage of all four civil rights statutes—race, age, sex and handicap—but only attempts to fix the problem that was created by *Grove City* with regard to educational institutions, and I think that's the essence of the debate.

Ms. **Futrell**. Well, I took the time to read the testimony that was presented yesterday—I believe it was by Mr. Reynolds or Mr. Smith or someone—I'm sorry, I don't have the exact name, but as I read through his analysis of the two, we believe that the Dole bill does not cover the other areas, and we are very concerned that if we do not pass H.R. 700, that we would leave the legislation dealing with title VI, the handicapped and the aged still hanging without a clear understanding as to whether or not they will be implemented, as we had done so before.

And so we have a very real concern that the Dole bill does not cover those areas.

Mr. **Bartlett**. Well, let me go on to my next question but, for the record, I haven't signed on to either bill, but the Dole bill which explicitly covers all four of the civil rights statutes, but it only covers it for educational institutions, and that's the essence of the debate.

My second question is, do you believe that these four civil rights statutes should apply to Congress as an institution or as a recipient of Federal funds?

Ms. **Futrell**. Well, I would assume that the laws of the land would apply to everyone. And unless that is incorrect——

Mr. **Bartlett**. Well, do you believe they should? They don't, in this case, but do you believe they should?

Ms. **Futrell**. Oh, it does not, right now? Then I have learned something today.

Ms. **Cantor**. I knew it did not apply, but I think it should, too, as an individual, again. I don't know about the AUP, that has never come up in our discussions.

Mr. **Bartlett**. Do you think it should be made to apply in the context—Mr. Conyers will ask you if I don't—do you think it should be made to apply in the context of this bill, since we are defining the coverage in this legislation?

Ms. **Cantor**. Well, this bill isn't written that way. I read the bill, and it does not cover Congress.

Mr. **Bartlett**. Do you believe it should?

Ms. **Cantor**. Well, that would mean rewriting the bill.

Mr. **Edwards**. The time of the gentleman has expired.

Mr. **Bartlett**. Thank you, Mr. Chairman.

Mr. **Edwards**. The gentleman from Montana, Mr. Williams. OK. The gentleman from Texas, Mr. Armey.

Mr. **Armey**. Thank you, Mr. Chairman.

Ms. Futrell, I'd like to explore something you said. I would point out that my wife is a student of psychology and doing a thesis on career commitment in women, which is a fascinating subject to me, and one that I try to follow.

You said something in your testimony that I find fascinating. Obviously, you feel a need for civil rights legislation to give equality of opportunity to all people, and you testified that you would like to see all people have freedom from the situation where they would not have access to certain programs and professions in a manner in which you were denied access at an earlier time, and I'm very curious about that.

Can you cite me an incident in your professional and personal history, where somebody said to you that you could not enroll in a degree plan or enter an occupation because of your race or your sex?

Ms. **Futrell**. Well, obviously, they don't say that up front, like that, but when you look at the situation that we face, you find that very subtly people are denied certain opportunities, and let me give you some examples.

If you look at the analysis of postsecondary education, especially at the graduate school level, you will find that the number of women going into those programs is significantly lower than the number of men, especially if you compare the graduate schools with the undergraduate schools, so that's a denial.

Mr. **Armey**. I appreciate the statistics, and I don't want to be rude, but I can't let you filibuster away my time.

Ms. **Futrell**. I'm sorry, I wasn't trying to filibuster, I was trying to respond to your question.

Mr. **Armey**. I appreciate that.

The numbers do not differentiate between who made a choice to do what, and who did not. Is it at all possible, in your estimation, that the occupational placement of women can be a reflection of the choices they make?

Ms. **Futrell**. I beg your pardon. Repeat the question.

Mr. **Armey**. Let's give credit to the fact that women are intelligent, rational human beings who freely make choices from among a variety of options, about which occupational decisions they will make.

Can it be that women do tend to make choices that allow them a flexibility to, one, have an occupation; two, be involved in a family in which they are comfortable with?

Ms. **Futrell**. Well, I'm trying to relate the question to the testimony and to what we are saying here, and let me just say that I can make a choice as to where I want to go, but will I have an opportunity to implement that choice? Will I have an opportunity to get into a school? Will I have the funding? Or will I be denied?

And let's face it. In the 1940's and the 1950's, we were denied access to certain schools. We were denied access to certain programs.

Mr. **Armey**. Did anybody deny you access in any place where you made an application and a request to enter—either a school, a program, or an occupation? Did somebody say, "No, you cannot be in here because you are a woman"——

Ms. **Futrell**. In Lynchburg, VA, I was denied the opportunity to go to E.C. Glass High School because I was black.

Mr. **Armey**. You were denied that.

Ms. **Futrell**. I was denied.

Mr. **Armey**. When was that?

Ms. **Futrell**. It was in the 1950's. I was denied that opportunity to go because I was black.

Mr. **Armey**. And in what——

Ms. **Futrell**. I was denied the opportunity to take certain courses and certain programs because I was black.

Mr. **Armey**. When was that——

Ms. **Futrell**. I was denied the opportunity——

Mr. **Armey**. When was that situation corrected?

Ms. **Futrell**. I beg your pardon?

Mr. **Armey**. When was that situation corrected?

Ms. **Futrell**. It was corrected after I graduated.

Mr. **Armey**. OK. But since then——

Ms. **Futrell**. After I graduated.

Mr. **Armey** [continuing]. That situation does not take place today. Nobody denies people these opportunities today.

Ms. **Futrell**. Well, what we are saying is, we don't want to go back to that. That's all we're saying.

Mr. **Armey**. And you're saying that——

Ms. **Futrell**. And there are places in America today where people still are going to schools that are basically segregated.

Mr. **Armey**. All right. Now, wait a minute.

Ms. **Futrell**. And that is very true, and it is not by choice because that's all they have.

Mr. **Armey**. For 21 years after the passage of the Civil Rights Act, nobody was denied in that manner. And, indeed, the *Grove City* case——

Ms. FUTRELL. We have taken many cases to court to overrule discrimination, whether——

Mr. ARMEY. That's my point.

Ms. FUTRELL [continuing]. Sex, or whatever.

Mr. ARMEY. OK.

Ms. FUTRELL. And we do not want to have to go back to the way things were before. There are many instances where women were denied an opportunity to get an education. They could not get into law programs, or medical programs, we were denied. And we do not want to go back to that.

Mr. ARMEY. But my point is, existing law gives you recourse to take a specific case——

Ms. FUTRELL. Before the *Grove City* case.

Mr. ARMEY. It does not today.

Ms. FUTRELL. Under the situation we are facing today, we can be discriminated against.

Mr. ARMEY. I just cannot understand that. You mean under the situation we have today, that I might be able to make application for graduate study at Texas Women's University and be denied access to that school because of my sex?

Ms. FUTRELL. Under the *Grove City* decision, yes.

Mr. ARMEY. I just cannot believe that.

Ms. FUTRELL. Well, that's what the law says.

Mr. ARMEY. If I should be denied entrance to Texas Women's University today, are you telling me I have no recourse under the law?

Ms. FUTRELL. Mr. Armey, according to the *Grove City* case, our recourse might be very limited. Our resources might be very limited, but it can happen much more so in 1985 than it could happen in 1983. That was the decision that was handed down by the Supreme Court.

Mr. ARMEY. I just can't believe this.

Ms. FUTRELL. Well, I find it hard to believe, too, but it's——

Mr. ARMEY. Can you tell me——

Ms. FUTRELL. I find it hard to believe, but it is believable.

Mr. ARMEY. Spell this out for me. In what way could Texas Women's University today, under existing law, deny me entrance because of my sex? I don't understand how that's possible.

Ms. FUTRELL. Well, if they decide that the funding that you received, that they don't want to use that and they don't want to admit you, they can just say you can't come in. But do you think that they would really tell you why?

You would have to be able to prove that they discriminated. And, yes, I think there is a real possibility of discrimination now. Sex, age, race, handicap—there are real possibilities now.

Mr. ARMEY. Now, in the *Grove City* case—

Ms. FUTRELL. Now, if they tell you why, I think that they would be a little naive, and I wouldn't want to go there anyway.

Mr. ARMEY. What I believe you are doing is building strawmen and knocking them down.

Ms. FUTRELL. No, sir. I have experienced discrimination, and I have experienced it most of my life.

Mr. ARMEY. When?

Ms. FUTRELL. When? I just gave you an example.

Mr. Edwards. Would the gentleman yield?

Mr. Armey. Was this before or after the Civil Rights Act? After the Civil Rights Act, you have experienced specific——

Ms. Futrell. I did not go to a desegregated school, sir——

Mr. Edwards. Would the gentleman yield?

Ms. Futrell [continuing]. Until I went to graduate school.

Mr. Edwards. Actually, the time of the gentleman has expired.

Mr. Armey. My time? OK.

Mr. Edwards. The gentleman from New York, Mr. Owens, is recognized, for 5 minutes.

Mr. Owens. I think there is overwhelming statistical evidence in volumes and volumes of studies in congressional hearings which support the fact that there is widespread massive discrimination, and these laws were originally designed to correct that, and we would be going backward if we don't have the laws which would be a bulwark against that kind of discrimination occurring again.

I just want to ask one question of Ms. Futrell. You mentioned women's athletics in your testimony briefly. At a previous hearing of this joint committee, a witness testified that there had already been, as a result of the *Grove City* decision, a tremendous psychological impact. An impediment had been created to the forward movement and involvement of women in athletics.

I wondered if the NEA had done any studies or done any monitoring and has any evidence with what is happening with women's athletics as a result of the *Grove City* decision, anything that can be pinpointed which creates an impediment?

Ms. Futrell. Well, we have not done a thorough study, but we have gone through some of the cases which have come before us as they relate to athletics. Just a couple of examples, if I may cite them to you.

In New York, for instance, we had a male coach who filed a case because access to space, funding, programs, equipment, that access was not provided for the girls as provided for the boys, and so a complaint was filed there.

In Alabama, we had a situation where the coaches were paid less if they coached girls than they would have been paid if they coached boys. And these are cases that we have had filed in the last year or so. And we have some others that we can give you if you would like for us to give you some more, but we just pulled some examples for this particular testimony, but the case in New York and the case in Alabama are typical of what we usually experience.

Mr. Owens. I think it is worth following and monitoring because they never—as you previously pointed out, in the case of discrimination on the basis of race—they never say that it is due to the fact that they don't think women's athletics are important, but it is a matter of setting priorities and determining how they are going to spend the available funds. It is costly to equalize and begin to move toward more realistic kinds of sports programs for women, and the real reasons why that doesn't happen is never stated, but given the fact that the *Grove City* decision took place, a lot of people have sort of begun to freeze the effort and act as if there are going to be additional moves which will allow them to just forget about trying to equalize opportunities for women in sports.

So, I think your organization—I'd appreciate any monitoring you are doing and reporting it.

Ms. **Futrell**. Well, we will give you some more information with reference to that particular question, and we will monitor it more closely.

Mr. **Owens**. Thank you very much.

Mr. **Edwards**. The gentleman from Illinois, Mr. Fawell.

Mr. **Fawell**. My inquiry here, I guess, is more—it was the same question that I put to the panel yesterday. I personally have no problem whatsoever in going along with the concept that if there is discrimination, then it ought to affect the institution, the full length and breadth of the institution's activities.

The problems that I hear being expressed time and again, however, is the question as to whether there is a broadening of the scope of the bill, and a lot of people express perhaps real or illusionary fears in that regard.

As the four civil rights acts are concerned right now, there are certain statutory exemptions to coverage, I gather, although I, frankly, haven't gone over each of those acts to determine what statutory exemptions there are, or what regulatory exemptions there may be, and I think this is one thing that is bothering a lot of us. We just haven't had that information given to us, as yet, and I think it would be helpful to have it.

For instance, I am told there is a regulation in section 504 of the Rehabilitation Act of 1973 that does exempt, in effect, the mom and pop store from being deemed to be a receiver of Federal assistance so long as they have less than, I think, 14 employees, or something like that.

That's very helpful for us to know because then the detrimental consequences which some see in reference to this act, don't appear to be quite as great as one otherwise might see.

My question then, in the elongated statements here, is, we have other inquiries in regard to—or expressions of potential fears in regard to whether it would be deemed to be receiving Federal assistance if you had such things as disaster loans, or price supports, or research contracts, or corporate entities, for instance, private entities, involved in the JTPA, and things of this sort.

Do you find it offensive to be thinking in terms of—or this committee thinking in terms of trying to do some detailing and to express as best we can, by definition, just what we mean when we are talking about Federal assistance in terms of what will trigger the coverage of this act because we have now multiplied the acts which will be covered by this act by saying it isn't just program or activity, we are talking about now all the operations of this corporate, public or private entity.

That being so, I think there is some credence in those who are constructively looking at this act, and I believe just about everyone is. To try to then do some devining, some honing so that we are not going to have a whole bunch of lawsuits then, to try to determine if somebody had a loan and there is a disaster, or something like this, that he, therefore, or it may be covered.

Do you find that offensive for us to be thinking in terms of some amendments in that regard? I hope I've made myself clear.

Ms. CANTOR. Yes, you are clear. It seems to me that some of this is, of course, taken care of by regulation after the law is——

Mr. FAWELL. True.

Ms. CANTOR. Right—and that—but other things. Just having the law is really helpful in an educational institutions. I have been recipient of research grants, for example, and it is really nice to know that the law backs up my desire to hire people to work for me that are not discriminating, and this is true—I've also been chair of my department, and I find that having affirmative action laws and regulations, and having this broad institutional coverage by title IX and the other civil rights laws are really very helpful.

They help you with your colleagues. You know you have the support of the Government behind you, and it makes it much—it does widen opportunities.

Mr. FAWELL. I would agree with you 100 percent. My fear is that the bill may end up nose down if we don't also clarify the real, or perhaps illusionary fears, that a number of people have that the bill will pass and then we will find many of our constituents involved in being covered by this when they never knew any concept that they would be covered by it.

So, my real specific question is, Do you find it offensive, though, if people were to talk about some kind of amendments that can define, for instance, when we are talking about what Federal assistance will trigger coverage of this act. And I would agree, indirect assistance to students, for instance, under the Pell grants, should be deemed to be Federal assistance. I don't have a problem necessarily with that at all, but I'm not so sure about whether someone gets Federal funds under the Disaster Loan Program, or under a research grant, or under the JTPA Act, for instance, whether or not we are of the intent, Congress is of the intent that that should trigger coverage, or whether we would like to look at, for instance, job aids discrimination under section 504, that we might want to put into statutory form exemptions to say that, "Look, small employers aren't going to be involved in this," and things of that sort.

I think it would calm the waters quite a bit, and we might be able to save an awful lot of legal fees, too, if Congress tried to express those exemptions that would exempt certain entities that did, indeed, have some kind of Federal assistance flowing to them, for instance, under a disaster loan program——

Mr. EDWARDS. The time of the gentleman has expired.

Ms. CANTOR. Could I just say one thing? I think that all research grants given to a university should be covered. I don't know about the others, but I really strongly believe that research is—if the Government supports research, that the antidiscrimination laws, all four of them, should apply.

As far as age is concerned, of course, there's already a statute that says that you can't—that over 70, you don't have to hire people. I mean, that's already a law. You could force retirement at 70, so that you have already set some kinds of age discrimination, in a sense, and the other parts of the Age Discrimination Act are really important to open up, especially the academic institutions, to older scholars and people who are really very knowledgeable and can really help the universities. So, I'm really gung-ho on having the age part of this bill included.

Mr. FAWELL. I'll go along with that. Thank you.

Mr. EDWARDS. The gentleman from Illinois, Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

I don't have any specific questions I want to raise of the witnesses, but I must say that I agree with the testimony which they have given in terms of its all coverage and their supportive position for H.R. 700, and I don't intend to use my 5 minutes, but my conscience dictates to me that I should warn you, if you don't already know—and this is based on what I've been able to gather in my experience in field hearings around this issue—its passage is not going to be easy.

It may very well get through the House, of which I'm a part, but I'm afraid that unless we begin to let our positions in support of it, be known the death knell may very well be sounded in the Senate again, as it was last year.

The forces who oppose H.R. 700, who appeared before our committee, have been in the minority, but they represent institutions who expound on the theory that the privacy and the right of an organization to maintain its independence without governmental influence is an argument that I'm sure will have some impact, as it has in the past, on certain people who have to vote on this legislation here in the legislative bodies of our Congress.

And I would hope that you understand that it appears to me that even the media, to some extent, has been engulfed by some of the shenanigans of this administration. They seem to embrace the position of the administration on issues such as these.

A case in point is how it is played up about the number of kids who are recipients of student loans, who have an opportunity maybe to go to Florida. One would think this is the position of a number of students instead of singling out those who may be that fortunate, and find out what loopholes might have permitted them to get into a position where they can get a student loan and still have money left to go to Florida.

I even heard over this morning's radio where they found one student who wound up in Europe, who is getting a student loan. But these are the things that would be blown up, not the students who could get an education if they were not recipients of a loan, which is the majority of the problems of a number of people. And these are the kinds of things that I think we've got to begin to talk about and say something about, otherwise, I think we will be lost again in our efforts to get this legislation passed.

Ms. FUTRELL. We agree with you that there is a very real need to make sure that people are aware of this legislation and following through on that need. We, in our publication, NEA Now, have notified 80,000 leaders throughout the country that this issue is before Congress, and we are encouraging them to write to the Senators and to the Representatives. We are encouraging them to lobby the Representatives from their home, and to do everything possible to get this legislation through.

It is very scary to believe that in 1985 that we are having to fight battles that we thought we had fought and won 25 years ago. It is even scarier that we have people who don't believe that discrimination exists or that it will reoccur because I think that it is very, very rampant today. It is not maybe as open as it was 25 or 30 years ago, but it certainly is still rampant.

And by not having legislation such as H.R. 700, it makes it even more possible for people to discriminate. And so that's why I think that it is urgent that we do exactly what you said, and that is to get our members involved and get them to be much more supportive of this legislation, and we have started doing that.

Mr. HAYES. Thank you.

Mr. EDWARDS. The gentleman from California, Mr. Dannemeyer.

Mr. DANNEMEYER. I'd like to ask each of the two witnesses on this panel, have you ladies read the *Grove City* decision yourselves, personally?

Ms. FUTRELL. I read it when it was first issued about a year or so ago. I haven't read it recently.

Ms. CANTOR. I read it a few weeks ago.

Mr. DANNEMEYER. The reason I ask the question is because I had occasion, when this bill came up, to read it myself, and I think there is a drumbeat in the country on the issue, that somebody at Grove City was discriminating, and the truth is, nobody was discriminating, and the decision makes that very clear.

This whole controversy developed not because of discrimination, but because Grove City, as an institution, declined to execute an assurance of compliance certificate, a 1-page document.

Congress did not mandate that document. The Department of Education mandated that document. And what is even more puzzling is that we had a lawyer testify in Los Angeles last Friday that in the event of discrimination, you can state a cause of action for violation of title IX, without alleging a violation of a regulation, which makes me ask the question, if we don't need a regulation adopted by the Department, to state a cause of action in violation of title IX, who needs the regulation?

I don't quarrel with the need for the basic law, title IX, I accept that. I support that. That's good public policy.

My question is, would you support an amendment to this bill which would say that before some subsequent Department of Education lawyer decides to go after some school like Grove City, that as a condition precedent for the stating of a cause of action against such a school, they must allege if they fail to execute the certificate of assurance of compliance, that there has actually been discrimination at that school, of some type. Do you understand what I am saying?

Ms. CANTOR. Sort of, yes.

Mr. DANNEMEYER. In other words, if some school, in the future, declines to execute an assurance of compliance because of conscience, which is what Grove City did, before the Federal Government can hammer that school into the ground for failure to execute the assurance of compliance and everything that flows from that, they must allege that such a school was guilty of discrimination. Would you support that kind of an amendment?

Ms. FUTRELL. I believe that we would have a great deal of difficulty supporting what you have outlined because, if I understood what you said, basically, the individual would have to prove discrimination as opposed to the institution.

Mr. **Dannemeyer**. No, the Government. The Government would have to allege that the school discriminated against somebody in order to go after them for a failure to execute the assurance of compliance.

Ms. **Futrell**. I think I've stated our position. I don't think we could support that.

Ms. **Cantor**. I don't think we could either.

Mr. **Dannemeyer**. That's puzzling because, you know, three of the Justices, in the opinion, just sadly commented on the fact that in this instance, that the resources of the Federal Government were pursued not because of discrimination, but because this school failed to execute an assurance of compliance that Congress didn't even call for.

My whole point is, we live in a free society, supposedly free of discrimination, but there is a claim to be made that why in the world should we live our lives because some regulator in the Department of Education says, "I think we need the execution of assurance of compliance just to make sure that these folks aren't discriminating."

Why do we need the assurance of compliance? Would you like to comment on that?

Ms. **Futrell**. We will be very happy—and let me be very honest with you, Congressman—I am not a lawyer, and I will not try to profess to be one. And, basically, what you have described, I think, would need a lot more legal opinions than I have. And we will be very happy to give you a response to that question, based upon our interpretation of how it would—the legal implications that it would have. So, we will be happy to do that, but based on what you said and my gut reaction, you know, as a teacher, I would have to say, based on my gut reaction, that we would not be able to support that kind of amendment, but we would be happy to give you some additional information if you would like that.

Mr. **Dannemeyer**. Well, think it through because the administrative law judge in that case, in his opinion, as it began its way up through the process, marveled at the effort that Grove City had exhibited to not discriminate. And you get the impression from hearing all this testimony and controversy, that, boy, we've got to correct discrimination.

And I just want to make clear that the record shows that there wasn't any here. We're just talking about excessive conduct on the part of an administrative bureaucrat in the Department of Education, in my humble opinion.

Mr. **Edwards**. The time of the gentleman has expired.

The gentleman from California, Mr. Martinez.

Mr. **Martinez**. First of all, let me say that there are a lot of regulations that are in place that weren't specifically mandated directly by the Congress, but in a way they were mandated.

When you pass a law, you say, "We need to do this," and you develop an agency, and you tell the agency, "We want this intent carried out," they have to set in place regulations that then determine how that's going to be carried out. That's a fact.

So, if that is not written in gold type somewhere in the Congressional Records, or in the hallowed halls here, it was definitely an intent that that agency should carry that out in that way.

Now, I agree with Dannemeyer, he is absolutely right that this is a free country. It is also free to discriminate. And I don't care, as long as you don't use my tax money to discriminate against me. All right?

And if this department asks that this form, this contract be filled out, and a part of this contract be a statement that "We will not discriminate," and they had no intention to discriminate, as they have stated at hearings where they have testified, then they shouldn't have been afraid to sign this. That's as simple as that.

Don't sign it. And, also, if you want to discriminate, don't take Federal money. And I think there is something that a lot of people miss—and my colleagues get all alarmed when I talk about it—even if they don't get a direct subsidy through a student loan which goes to cover their overhead, and even if they don't take a grant of some kind for a research project in their college, they do get Federal assistance. They get it in other kinds of subsidies.

When I, as an alumnus of a college, get a big tax writeoff for a contribution that I've made, that's Federal assistance, and they are still using taxpayers' moneys because the taxpayer that does pay, that doesn't get that deduction, has to make up that difference. All right?

But what I'm really concerned about here is that there are some people that believe there's not discrimination, and you touched on it.

I remember a while back—and we can all lull ourselves into a false sense of security—but I remember a while back, there was a little councilperson in one of the cities I represent, that was elected, and she had come into a meeting that we were having of the San Gabriel Valley Cities Association and said to me, "You know, I have really lulled myself into a sense of false security. I really believed, in the community that I live, with such a multi-ethnic background, that there was no discrimination anymore."

And she said, "You know, it's the damnedest thing. Just when you believe there isn't, that ugly head of bigotry raises its head and shows it to you, and there is discrimination here, and there has been."

And for someone from Texas to say, "I can't believe there's any discrimination," is absolutely amazing—is absolutely amazing.

Mr. **Armey**. Would the gentleman yield?

Mr. **Martinez**. And I just don't believe that when a person says, "I don't believe, I don't believe, I don't believe", that they really don't believe.

In this particular case, the *Grove City* decision, it was allowing a person to say that we can take Federal dollars and discriminate——

Mr. **Armey**. Will the gentleman yield?

Mr. **Martinez**. No, I won't yield. You had your time, more than your time—and they will. What I would like to hear from you is, or someone maybe not on this panel, how you feel about the regulations that were to assure that any person receiving Federal aid would not discriminate.

Ms. **Futrell**. Do you want to respond to that?

Ms. **Cantor**. I am not familiar with the Department of Education regulation, but I have been somewhat familiar with other regulations of Government, and I always thought that it was part of the mandate of the department, from the law that was passed by Congress, that give the agency the ability to regulate, and I don't see how that can be separated from Congress in the law itself. That has been my opinion, and I'm not a lawyer, either.

Mr. MARTINEZ. Well, I'm glad there is at least a few of us who understand that when you pass a law, you don't write every word, dot every "i" and cross every "t," that you do allow for the agency who is going to have the responsibility of carrying out that law, the ability to make regulations to carry out that intent.

Ms. CANTOR. I have been studying the FCC, for example, for about 15 years, and I've seen them deregulate, in June, a whole series, which was completely legal under their mandate. So, the same can be said for the laws and the regulations, and that is part of the law.

Mr. EDWARDS. The time of the gentleman has expired.

The gentleman from Maine, Mr. McKernan.

Mr. MCKERNAN. I have no questions of this panel, Mr. Chairman.

Mr. EDWARDS. The gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. Thank you, Mr. Chairman.

I just wanted to explore one area here. There's been a lot of either smoke, or idle fear, or legitimate fear, about this legislation going beyond the scope of law before *Grove City*.

I am curious to know if, in fact, there is a real disagreement, or is it just smoke being blown by one side or both sides. Would you concede that there is a line between Government and non-Government activity in the area of discrimination? That is to say, should, for example, all homes in the United States really have ramps so that there is access to handicapped—is that a goal? Or do you think we ought to have some line and say, "Well, it's your own home, you are building it," even if you're getting a veteran's loan or something or other, that the primary purpose of that is not to have all homes have ramps?

Do you think the social goal should be that there really should be no opportunity for people to make their own decisions about things like access, privately, or not?

Ms. FUTRELL. Well, our goal is to simply restore the legislation to the point where it was prior to the *Grove City* decision. And while we would like to see perhaps some expansion, et cetera, for the future, that is not what we are trying to do right now. We just want to restore to where we were, and make sure that the areas that we've talked about today are covered.

Our concern is that when the dollars are used, that they not be used by institutions or used in a way which discriminates. And we don't think there should be discrimination on the basis of sex, or race, or age, or handicap, et cetera. So, that's all we are trying to do.

Ms. CANTOR. And I think I would agree. I think that especially I am interested in Government assistance programs in education, and I would like also to see the law restored.

I think, from the way I read some of the history, I think that was the intention of Congress, both for title IX and the 1964 civil rights law.

Mr. PETRI. Now, there has been testimony at previous hearings that, for example, if this legislation were to pass as it is currently before us, it would mean that dairy farmers would have to put in access ramps, since they receive a Federal agricultural subsidy. Or they could be charged with discriminating in hiring people to help them milk cows.

I don't know if that's an idle fear or not, but if that's not the goal, then it would seem to me that it would certainly facilitate passage of this legislation to work on language that would restrict it to what the law was before—I recognize the law was not uniform, there were different decisions and conflict in the law—but roughly to where it was before *Grove City*.

Ms. FUTRELL. Well, again, we are supporting the same exemptions, et cetera, which were in place before, and if that was not covered before, then it would not be here now.

Ms. CANTOR. I'm not prepared, really, to discuss that in any detail.

Mr. ARMEY. Would the gentleman yield?

Mr. PETRI. Yes.

Mr. ARMEY. For the record, I'd like to make it clear that the gentleman from Texas does not doubt that there are mean-spirited people who may discriminate, scattered around the world.

What I found it hard to believe was the contention that there is not now, and will not be unless this bill is passed, recourse under the law to bring them to account under the existing civil rights legislation, and I would like to make it very clear that that is the case.

There is no less likelihood that there are overzealous people who will look for discrimination where it does not, indeed, exist, as there is that there are no people who would not be mean spirited enough to discriminate.

And I can assure you that I would be the first to join you with a documented charge of discrimination against any person, and prosecuting those people who violate not only the law, but the spirit of just plain good manners and respect for fellow man and woman. And I guess I would like to make that clear because the implications of the gentleman's statement concerning my view on this matter should not go undefined. And I thank you for your time.

Mr. EDWARDS. I believe that brings to a close the testimony of——

Mr. WILLIAMS. Mr. Chairman, may I recall my 5 minutes?

Mr. EDWARDS. Yes; the gentleman from Montana, Mr. Williams, is recognized for 5 minutes.

Mr. WILLIAMS. I thank the Chair and, before this panel leaves and the next one comes on, I want to make a statement, as the chairman of one of the subcommittees within the Committee on Education and Labor, and that is the Subcommittee on Select Education. In the subcommittee we will be holding hearings on the Handicapped Children's Protection Act in an effort to restore the rights of handicapped children under the Education of the Handicapped Act and section 504 of the Rehabilitation Services Act, which was limited by the *Smith* v. *Robinson* decision.

I think it is ironic that the Supreme Court has determined that restrictions may be placed upon the rights of disabled children and adults, and it did so in the process of interpreting statutes which the Congress intended to promote the rights of disabled people.

In both court cases—that is, *Grove City* and *Smith* v. *Robinson*—the court significantly, in my judgment, undermined the intent of Congress to guarantee full rights to all disabled people.

Grove City narrowly restricts the circumstances under which we do not allow Federal money to be used for activities that discriminate against handicapped citizens. *Smith* v. *Robinson* effectively precludes the use of section 504 to remedy discrimination in education against handicapped children.

It must be a top priority of this 99th Congress to restore full enforcement of the civil rights of all disabled people—women, men, children, minorities, and senior citizens.

Now, these hearings on the Civil Rights Restoration Act are a key component of that process, and I'm pleased to be a party to these hearings, and to strongly support H.R. 700.

In conclusion, I want to note my own opinion, that the successes which we've had in realizing America's full promise, that is, the glitter of our wealth and the nobility of our ideals, lie in large measure in our successful attempts to eliminate discrimination and assure a quality of opportunity to all within our borders.

America's failures, that is, the tragedy of lost opportunity among our people, the dispair of the inner cities, economic dislocation—our people's darkest and meanest moments lie in our failure to assure full equality of opportunity to all of our neighbors.

Defense isn't the most important issue before this Congress. The deficit isn't the most important issue before this Congress. Democracy is the most important issue before this Congress, and this hearing and the activities that shall follow it will be among the most important actions taken by the 99th Congress. Thank you, Mr. Chairman.

Mr. **Edwards**. Thank you, Mr. Williams, and thanks to our witnesses, who were really very helpful and gave splended testimony.

Mr. **Edwards**. The next panel consists of two distinguished lawyers, David Tatel, Esq., at Hogan and Hartson here in Washington, DC, and Dan Marcus, Esq., of the law firm Wilmer, Cutler, and Pickering.

Mr. Tatel has testified before. We welcome you, Mr. Tatel, and you may proceed. Without objection, both statements will be printed in the record, in full.

STATEMENT OF DAVID TATEL, ESQ., HOGAN & HARTSON, AND DAN MARCUS, ESQ., WILLMER, CUTLER & PICKERING

Mr. **Tatel**. Good morning, Mr. Chairman.

Mr. Chairman, members of the committee, my name is David Tatel. I served as Director of the Office for Civil Rights, of the U.S. Department of Health, Education, and Welfare from 1977 to 1979.

During that period of time, the Office for Civil Rights was responsible for enforcing title VI, title IX, section 504 and the Age Discrimination Act.

I appreciate this opportunity to appear here this morning, to share with you my views about H.R. 700. With your permission, Mr. Chairman, I will submit my written statement to the record, and just make a couple of brief comments this morning.

Since the debate over H.R. 700 largely turns on the question of whether it is or is not a restoration act, I thought I might begin by describing for the committee how HEW interpreted these four civil rights statutes, before *Grove City*.

When the agency received a complaint about discrimination, or if the agency decided to initiate a compliance review on its own, it would often investigate all aspects of the institution, regardless of the fact that the particular Federal funds the institution received were quite limited.

In other words, the Department would not limit its investigation to the particular program or activity within the institution which received the Federal financial assistance.

If the Department discovered discrimination, for example, in a computer sciences program of a college, and if the college was not willing to correct the problem voluntarily, then OCR would either refer the case to the Department of Justice, or it would initiate fund termination proceedings.

Funds could be terminated, however, only if the Department concluded and proved that the computer sciences program was supported by Federal financial assistance or, if not, that the discrimination in the computer sciences program infected a federally funded program or activity elsewhere in the institution.

The *Grove City* decision narrowly limits HEW's practices with regard to the jurisdiction of the statutes. Under *Grove City*, HEW could not—the Department of Education now—could not even initiate an investigation in the case I described, unless it first determined that the particular computer sciences program involved actually received Federal funds.

If it didn't—that is, if it could not be shown that that program received Federal funds—then the Department could proceed no further, even though discrimination might have been rampant throughout the rest of the institution.

I believe that H.R. 700 is, thus, necessary to restore the institutionwide jurisdiction that prevailed prior to *Grove City*.

Now, the opponents of H.R. 700 argue that it would, in fact, expand pre-*Grove City* jurisdiction. I think their concerns are not supported by the language of the statute.

H.R. 700's definitions of program or activity reflect the definitions that prevailed at HEW with respect to all institutions, prior to *Grove City*, and the changes that H.R. 700 proposes to make in the enforcement provisions equally reflect pre-*Grove City* practices, and I believe are probably necessary in order to maintain the pinpoint provisions of the statutes.

In other words, Mr. Chairman, after H.R. 700 is passed, the jurisdiction of the four key civil rights statutes will be no broader or no narrower than it was prior to *Grove City*.

Now, in conclusion, I'd like to simply suggest that during this debate, I believe it is important to keep one very important fact in mind, and that is that these civil rights statutes—that is, title VI, section 504, title IX and the Age Discrimination Act—are not, as the opponents of H.R. 700 seem to suggest, onerous or evil statutes which we must limit as much as possible.

To the contrary, these statutes reflect one of our Nation's most fundamental principles, that institutions which receive or benefit from taxpayers' funds ought not discriminate.

Grove City permits them to do so and, for that reason, I believe it ought to be overturned through the enactment of H.R. 700. Thank you, Mr. Chairman.

[Prepared statement of David S. Tatel follows:]

PREPARED STATEMENT OF DAVID S. TATEL, ESQ., HOGAN & HARTSON

Mr. Chairman and Members of the Committee, my name is Davis S. Tatel. I served as Director of the Office for Civil Rights (OCR) in the U.S. Department of Health, Education and Welfare from 1977 to 1979. At that time, the Office for Civil Rights was responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. Those functions are now carried out by the Department of Health and Human Services and the Department of Education.

I appreciate this opportunity to appear here to share my views on H.R. 700, the Civil Rights Restoration Act of 1985. I support the enactment of H.R. 700 because it will restore jurisdiction under Title VI, Title IX, Section 504 and the Age Discrimination Act to what it was prior to the Supreme Court's decision last year in *Grove City Colleges* v. *Bell*, 104 S.Ct. 1211 (1984).

HEW's enforcement procedures regarding these important civil rights statutes evolved in connection with Title VI of the Civil Rights Act of 1964, the first of these statutes to be enacted by Congress. The Department interpreted Section 601 of the statute broadly to prohibit discrimination on the basis of race and national origin throughout any institution which received federal financial assistance. This broad interpretation was grounded on the language of the statute, its legislative history, and the well-accepted constitutional principle that all levels of government must steer clear of providing public revenues to institutions which discriminate on the basis of race or national origin. As a consequence, the statute was interpreted as permitting investigations of discrimination on the basis of race or national origin throughout the institution so long as any "program or activity" within it received federal financial assistance.

If an investigation revealed a violation of Section 601, OCR would negotiate with the recipient in an effort to obtain voluntary compliance. If those efforts failed—and they rarely did—OCR would impose one of the two sanctions set forth in Section 602. Either OCR would refer the case to the Department of Justice, which was authorized to file suit to require compliance with the broad prohibitions set forth in Section 601, or OCR would initiate an administrative proceeding to terminate federal financial assistance. The fund termination remedy, however, is not as broad as Section 601. Funds can be cut off only if discrimination occurred in the federally funded "program or activity" or if the federal funds benefited a nonfederally funded "program or activity" where discrimination occurred. Funds could also be cut off if a federally funded "program or activity" was "infected" by proven discrimination elsewhere in the institution.

Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 were based on Title VI and contain virtually identical language. As a consequence, HEW applied Title VI enforcement procedures and standards to these newer statutes. They were thus interpreted to prohibit discrimination on the basis of sex, handicap or age anywhere in a covered institution having a "program or activity" receiving federal financial assistance.

Prior to the *Grove City* decision, the Department would have applied these standards to Grove City College as follows: If the Department had received a complaint about the institution or elected on its own to conduct a compliance review, it would have determined whether sex discrimination existed anywhere in the institution even though the only federal assistance the school received was student financial aid. If sex discrimination was discovered in the school's computer sciences program, for example, the Department would have notified the institution that it was in violation of title IX. If the matter could not be resolved voluntarily, the Department would have referred the case to the Department of Justice, or initiated fund termination proceedings in order to prove that discrimination had occurred in the computer sciences program and that the program benefited from student aid, or if it did not, that the discrimination infected the federally financed student aid program.

The Supreme Court's *Grove City* decision dramatically alters these practices. *Grove City* now prohibits the Department from challenging any gender-based discrimination at the College except that which occurs in the student aid program. Since Title VI, Section 504, and the Age Discrimination Act contain language virtually identical to Title IX, the Department could likewise be prohibited from challenging discrimination based on race, national origin, handicap or age unless it could establish that the discrimination occurred in the particular federally funded "program or activity." If no such discrimination is found, the Department could be precluded from proceeding further even though discrimination might be rampant throughout the rest of the institution. H.R. 700 is necessary to restore the pre-*Grove City* interpretation of these important civil rights statutes.

The opponents of H.R. 700 argue that it would expand the coverage of Title IX and the other civil rights statutes beyond what it was prior to the *Grove City* decision. An examination of H.R. 700, however, demonstrates there is no basis for their concern with regard to health, education and social services programs. To the contrary, H.R. 700 accurately reflects the enforcement practices which prevailed at HEW prior to *Grove City*. This is true with respect to H.R. 700's definition of "program or activity," as well as with respect to the change it proposes to make in the enforcement provisions for civil rights statutes.

To be specific, H.R. 700 defines a "program or activity" as, for example, all of the operations of "(A) a department or agency of a State or of a local government; or (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government." This is precisely how Title IX and the other civil rights acts were interpreted by HEW prior to *Grove City*. A grant to a state department of education, for example, would subject that department and its recipients to federal civil rights jurisdiction. Likewise, a federal education grant to a governor's office would subject the office of the governor as well as the state education department to which the governor's office redistributed the federal funds to federal civil rights jurisdiction.

H.R. 700 also defines a "program or activity" as "(A) a university or a system of higher education; or (B) a local educational agency . . . or other school system." This definition likewise accurately reflects HEW's enforcement practices and regulations prior to *Grove City*. A grant to a university or a school system, no matter how limited the purposes of the grant, would have subjected the entire university or school system to federal civil rights jurisdiction. The grant could not, of course, have been terminated by HEW unless the Department determined that discrimination existed in the particular program receiving federal financial assistance or that the federal grant supported discrimination elsewhere in the institution.

As best I can recall, the civil rights statutes were applied to a "system of higher education" in only one circumstance, namely, with regard to HEW's investigation of formally segregated state systems of higher education. Under the Nixon, Ford and Carter administrations, HEW investigated all colleges and universities—including community colleges—within those systems without ever checking to determine whether each and every one of them received federal financial assistance. In fact, all colleges and universities in those systems probably did receive some type of federal financial assistance, at least in the form of student aid. Had HEW discovered, however, that one or more post-secondary institutions received no federal aid, that fact would not have affected the system-wide nature of HEW's investigation. The reason for that is simple: HEW could not have investigated system-wide allegations of discrimination if institutions within the system which did not receive federal aid were excluded. Any other result would have defeated one of the very purposes of Title VI, namely, the elimination of racial segregation in colleges and universities receiving federal financial assistance.

This "system-wide" approach to the Title VI investigations would not, of course, have been applied by HEW at the enforcement stage. Had any of those cases progressed to the enforcement stage, the Department would have terminated only those funds that supported discriminatory activities.

H.R. 700's treatment of private corporations and partnerships is equally reflective of pre-*Grove City* practices. For example, HEW conducted institution-wide compliance reviews of hospitals even though the federal assistance they received might have been limited to a particular clinic or program. The question of whether the compliance review would have extended to completely unrelated, nonmedical activities of the hospital or to other, nonfederally funded hospitals owned by the same hospital chain never, to my knowledge, arose. Had the question come up, however, HEW's institution-wide approach to civil rights investigations would have resulted in those activities and entities being investigated as well.

Finally, H.R. 700's proposed amendments to the fund termination provisions of Title IX and the other civil rights statutes reflect pre-*Grove City* practices. Indeed, the use of the phrase "assistance which supports" is taken directly from *Taylor County* v. *Finch,* 414 F.2d 1068, 1078 (5th Cir. 1969), which held that the termination of federal funds is proper if they "are administered in a discriminatory manner, or if they support a program which is infected by a discriminatory environment." Moreover, if the phrase "program or part thereof" currently used in Title IX is not replaced with the "support" language proposed by H.R. 700, there is a substantial risk that the administrative agencies and courts could interpret the fund termination provisions as broadly as the coverage of the civil rights acts themselves. H.R. 700 is thus needed to preserve the so-called "pinpoint" provisions of all four statutes which prohibit the termination of federal funds unless they support conduct which violates the statute.

It is clear from the foregoing that H.R. 700 does not extend civil rights jurisdiction beyond the range of authority exercised by HEW before the *Grove City* decision. To the contrary, H.R. 700 will restore civil rights jurisdiction to what it was prior to *Grove City.* Equally important, H.R. 700 will preserve the pinpoint provisions of all four statutes. In sum, if H.R. 700 is enacted into law, the administrative application of the statutes will be neither broader nor narrower than it was prior to *Grove City.*

This does not mean that H.R. 700 will never be misinterpreted by federal agencies. Indeed, the entire strategy of its opponents has been to demonstrate how its language could be distorted and extended beyond its intent. This is, of course, a risk that Congress takes when it passes *any* legislation, for the English language is not unerringly precise. The proper course of action, in this as in all other legislation considered by this Congress, is not to narrow the statute to the point where there could be no conceivable mistakes in the future, but rather to enact a law which sets forth basic principles as clearly as possible and then rely on administrative decision making, which is reviewable by the courts, to ensure that the basic principle is properly implemented. This is precisely what H.R. 700 does. Its basic principle is the restoration of pre-*Grove City* civil rights jurisdiction. What is important is that H.R. 700 will provide clear guidance to government agencies and recipients of federal funds alike, and that it is sufficiently clear to ensure that agency misapplications can be corrected by the courts, or, if necessary, by the Congress.

In addition to restoring the previous interpretation of Title VI, Title IX, Section 504 and the Age Discrimination Act, H.R. 700 should be enacted to correct other problems caused by the *Grove City* decision. First, the *Grove City* decision creates a bureaucratic nightmare for the government and recipients of federal funds alike. Every civil rights investigation will require teams of accountants to trace the flow of federal funds and armies of lawyers to argue endlessly about what is or what is not a "program or activity." It will make the enforcement process cumbersome and expensive to all concerned, and will divert our attention away from the primary concern of both the government and the recipient, namely, elimination of discrimination on the basis of race, national origin, sex, handicap and age.

Second, the *Grove City* decision totally ignores the fact that receipt of federal financial assistance for one "program or activity" may well free-up nonfederal funds to be used in other programs or activities in the same institution. There is absolutely no reason why a person who is discriminated against in the latter program—that is, the program which has more local funds because of the receipt of federal financial assistance elsewhere in the institution—should receive any less protection than the person discriminated against in the program or activity directly receiving the federal financial assistance.

Third, by sharply narrowing Title IX, the *Grove City* decision may cause many people protected by Title IX and the other civil rights statutes to abandon the administrative process altogether. This would force many more cases into the courts which are more cumbersome, more expensive and less flexible than the administrative process. This result would be contrary to one of Congress' objectives when it enacted these statutes: the creation of a smooth and efficient process for remedying civil rights violations.

Finally, and perhaps most important, the *Grove City* decision is directly contrary to the very purpose of these important civil rights statutes. It makes absolutely no sense to narrow these statutes as the Court has done. They do not, after all, impose onerous or burdensome requirements which should be restricted as much as possible. Rather, they reflect one of our nation's most fundamental principles, namely, that institutions which benefit from public funds ought not discriminate on the basis of race, national origin, sex, handicap or age. The *Grove City* decision permits them to do so, and for that reason it should be overturned by the enactment of H.R. 700.

It is important to remember that Title VI, Title IX and Section 504 have been responsible for bringing about fundamental changes of enormous importance. Schools have been desegregated; non- and limited-English speaking students are gaining equal educational opportunities previously denied to them for many years; women and girls are making real progress towards achieving equal educational opportunities; and hundreds of thousands of handicapped people are being brought into the mainstream of American life. But the job is not yet done, and Title VI, Title IX, Section 504 and the Age Discrimination Act have a critical role to play in the future. The *Grove City* decision threatens the effectiveness of these statutes and should be overturned through the enactment of H.R. 700.

Thank you very much.

Mr. **Edwards**. Thank you, Mr. Tatel.

Mr. Dan Marcus.

STATEMENT OF DAN MARCUS, ESQ., WILMER, CUTLER & PICKERING

Mr. **Marcus**. Thank you, Mr. Chairman, members of the committee.

My name is Daniel Marcus and, from 1977 to 1979, I was deputy general counsel for the Department of HEW; from 1979 through 1980, I was General Counsel of the Department of Agriculture.

I would ask that my full statement be placed in the record, and I will try to limit my comments here to just a few minutes.

I would like to address myself to the concern expressed by a couple of the members of the committee this morning, and the charges that have been made by a number of witnesses, that in the guise of overruling the *Grove City* decision with respect to institutionwide coverage, that H.R. 700 would go further and expand the categories of individuals and entities who are regarded as being recipients of federal financial assistance, for purposes of the Civil Rights Act.

Specifically, it has been charged that H.R. 700 would, by broadly defining the term "program or activity," subject people such as farmers who receive price support payments, food stamp recipients, social security beneficiaries, and others, to the antidiscrimination provisions of title VI, title IX, and the other statutes.

I believe that there is no valid basis for these concerns. The basic language of title VI and the other statutes barring discrimination in programs or activities receiving federal financial assistance, has never been interpreted to reach the activities or actions of ultimate beneficiaries of federally financed programs, such as farmers, social security beneficiaries or welfare recipients.

This understanding has been firmly embodied in a number of agency regulations, of a number of departments, for many years, and it reflects the basic purpose of these laws.

In enacting these laws, Congress was not concerned with regulating the activities of the tens of millions of Americans who are the ultimate beneficiaries of federally assisted programs, but who in no sense can be viewed as operating a federally assisted program themselves.

Rather, Congress was concerned that educational institutions, State agencies, hospitals, and others who operate programs and conduct activities providing services to individuals and who are in a position to discriminate against those individuals, would be barred from discrimination.

By defining program or activity to make clear that it covers all operations of a recipient of Federal financial assistance, H.R. 700 does not disturb the preexisting, long-established concept of who is and who is not a recipient of federal financial assistance.

Since farmers or food stamp recipients have never been regarded as recipients for purposes of these statutes—that is, they have never been regarded as conducting a federally assisted program—they would be unaffected by H.R. 700.

The legislative history of this bill can make clear that it in no way disturbs the status of ultimate beneficiaries, under existing law. Indeed, I read before this hearing the statements of the sponsors of H.R. 700 in introducing this legislation, and they have already gone to great pains to make this clear.

Let me comment briefly on one other allegation that has been made, that is a related allegation, and that is that H.R. 700 would expand the law by applying title VI, title IX, and the other statutes, for the first time, to supermarkets and grocery stores who participate in the food stamp program.

I think this allegation is a red herring. Whether food stores are covered under existing law may not be entirely clear. I think they are. But whatever their status under existing law, it is unaffected by H.R. 700.

When I was general counsel at the Department of Agriculture, I was aware of the fact that the Department had never taken a clear position as to whether retailers in the food stamp program were covered, but I was also aware that there was, under the law as it has existed since the Civil Rights Act was passed in 1964, a very strong argument that they are covered. They play a key role in what is clearly a program of Federal financial assistance. They receive direct payments from the Treasury to redeem the food stamps they have accepted, and those payments clearly provide the retailers with revenues and income that they would not otherwise receive.

It is ironic that anything the *Grove City* decision, itself, the part that's not at issue in this legislation, the part that held that *Grove City* was a recipient of federal funds, strengthens the argument that food retailers are covered under existing law, but for purposes of this hearing and for purposes of consideration of H.R. 700, the important point with respect to food retailers or with respect to food stamp recipients, or farmers in the price support programs who clearly are not covered under existing law, is that nothing in this statute would change their status.

In sum, I believe that the objections that H.R. 700 goes beyond its stated limited purpose of overruling the *Grove City* decision are unfounded and should not deter your committees from recommending approval of this legislation. Thank you.

[Prepared statement of Daniel Marcus follows:]

Prepared Statement of Daniel Marcus, Esquire, Wilmer, Cutler and Pickering

Mr. Chairman and members of the Committees: My name is Daniel Marcus, and I am a lawyer in private practice in Washington. From 1977 to 1979, I served as Deputy General Counsel for the Department of Health, Education and Welfare, and from April 1979 through December 1980, I was General Counsel of the Department of Agriculture. In both capacities, I was actively involved in civil rights matters.

The purpose of H.R. 700 is straightforward and salutary: to overrule the Supreme Court's holding in the *Grove City* case that recipients of federal financial assistance are free to discriminate in those aspects of their operations that do not receive federal funds. The bill would reestablish the principle that a recipient of federal financial assistance violates federal law if it discriminates in any of its operations.

David Tatel, in his testimony, has set forth in some detail how H.R. 700 would simply restore coverage under Title VI and the other civil rights statutes to what it had been understood to be before the Supreme Court's decision last term. I will not discuss that question further, except to state that Mr. Tatel's testimony is in accord with my own understanding of administrative practice at HEW and with that Department's position during the years I was there.

I will address myself, instead, to another question—the charge that in the guise of overruling the *Grove City* decision, H.R. 700 would vastly expand the category of individuals and entities who are regarded as being recipients of federal financial assistance for purposes of the civil rights statutes. Specifically, it has been charged that H.R. 700 would, by broadly defining "program or activity," subject farmers who receive price support payments or loans, Social Security beneficiaries, and food stamp and welfare recipients to the anti-discrimination provisions of Title VI, Title IX, Section 504, and the Age Discrimination Act.

I believe there is no valid basis for these concerns. The basic language of Title VI and the other anti-discrimination statutes, barring discrimination in programs or activities receiving federal financial assistance, has never been interpreted to reach the activities or actions of ultimate beneficiaries of federally financed programs, such as farmers, Social Security beneficiaries or welfare recipients. This understanding, which is embodied in a number of agency regulations (e.g., the Department of Agriculture's Title VI regulations, 7 C.F.R. § 15.2), reflects the basic purpose of those laws. In enacting these laws, Congress was not concerned with regulating the activities of the tens of millions of Americans who are the ultimate beneficiaries of federal financial assistance, but who in no sense operate a federally-financed program or activity. Rather, Congress was concerned with the state agencies, the educational institutions and others who operate programs or conduct activities providing services to others and who are in a position to injure ultimate beneficiaries through discrimination. In other words, ultimate beneficiaries are to a large extent the people intended to be protected by Title VI and the other anti-discrimination statutes, not the people subjected to those statutes.

By defining "program or activity" to make clear that it covers all the operations of a recipient of federal financial assistance, H.R. 700 does not disturb the pre-existing, long-established concept of who is and who is not a recipient of federal financial assistance. Since farmers or food stamp recipients have never been regarded as recipients, i.e., as conducting a program or activity that can in any part be regarded as a federally-financed program or activity, they would be unaffected by H.R. 700. The legislative history of this bill can make clear that it in no way disturbs the status of ultimate beneficiaries under existing law. Indeed, the statements of the sponsors of H.R. 700 in introducing the legislation have already gone to great pains to make this clear.

It has also been alleged that H.R. 700 would expand the law by applying Title VI and the other civil rights statutes for the first time to supermarkets and grocery stores which participate in the food stamp program. This allegation is a red herring. Whether food stores are covered under existing law may not be entirely clear; but whatever their status, it is unaffected by H.R. 700.

As far as I am aware, USDA's civil rights and food stamp regulations do not make clear whether food stores participating in the food stamp program are covered by Title VI and the other civil rights statutes. Nor am I aware of any clear statement by the Department that grocery stores are or are not covered. However, it is worth noting that for many years materials that USDA provides to retailers who agree to participate in the food stamp program have stated explicitly that the program "is available to all eligible regardless of race, color, creed, sex, national origin, age, political beliefs or handicap."

As General Counsel of USDA, I was aware that while the Department had never taken a clear position, there was a strong argument that retailers in the food stamp program are covered: They play a key role in what is clearly a program of federal financial assistance; they receive direct payments from the Treasury in redemption of the food stamps they have accepted; and those payments clearly provide the retailers with revenues and income that they would not otherwise received. If anything, the other part of the *Grove City* decision—the part H.R. 700 does not address—strengthens the agrument that food retailers are covered under existing law. For if a college that receives no direct federal payments itself but merely is the economic beneficiary of federal scholarship assistance to its students must be considered a recipient of federal financial assistance for purposes of the civil rights laws, one can argue that a food store in the food stamp program is even more clearly a recipient.

I am not suggesting that this question is free from doubt, or that it is settled that food stores that redeem food stamps are covered. But what does seem clear to me is that whatever the status of retailers in the food stamp program as recipients of federal financial assistance, that status would be unchanged by H.R. 700.

In sum, I believe that the objections that H.R. 700 goes beyond its stated limited purpose of overruling the *Grove City* decision are unfounded, and should not deter your Committees from recommending approval of this legislation.

Mr. **Edwards**. Thank you, Mr. Marcus and Mr. Tatel. You have been very specific, and having your expert testimony is very, very helpful to both committees.

Mr. Jeffords.

Mr. **Jeffords**. Thank you very much, Mr. Chairman.

First, I want to thank the witnesses for some very clearly stated positions.

Mr. Tatel, I find your statement particularly helpful to those especially who want a quick course in what this is all about. I think it does an excellent job of that.

I am interested in one word that's used, and if you could give me a little bit better idea of what the definition is, what it means—"infected"—that the discrimination infected the federally financed Student Aid Program. Could you give me a better idea of what that meant to those that were administering the program?

Mr. **Tatel**. The word actually comes from a decision of the U.S. Court of Appeals for the Fifth Circuit, in a case called *Taylor County* v. *Finch*, where it defined the coverage of the fund termination provisions by using the word "infected."

I guess I can best describe it perhaps with an example. Suppose, for example, an institution, a college, received no Federal funds other than a grant for, let's say, its computer sciences program, and its library was racially segregated, and a condition of credit in the computer sciences program was using the library.

Well, the library obviously received no Federal financial assistance and, therefore, under the fund termination provisions, there might be some question about it, but the fifth circuit said that in a case like that, discrimination in the library would infect the federally funded computer sciences program and could, therefore, be terminated.

Mr. **Jeffords**. Thank you. I have a problem. Those of us that are in favor of this bill are grappling with a problem, Mr. Marcus, that you brought up, and I'm having a difficult time in understanding, or being able to argue on the House floor, based upon your arguments—that is, that there's no worry about the farmers, there's no worry about these problems because there's been a long tradition of regulation.

That is one which is difficult for those of us who are trying to defend it, when you try to go to the words of the statute, for instance, and to differentiate, and say a farmer who hires 30 people on his farm, has a Price Support Program, or gets conservation money, or whatever, how that is differentiated from the grocery store, where you say that there probably is coverage.

I don't understand how you come to that conclusion other than from the history of the way the regulators wanted to regulate it to avoid those problems.

Mr. **Marcus**. Well, Mr. Jeffords, to the extent that there is a problem there, that is a problem under existing law.

Mr. **Jeffords**. I understand that. That's the problem.

Mr. **Marcus**. I think while one might suggest that there are some problems given the language of the statute, I don't think there are given the history, both the legislative history of the original Civil Rights Act of 1964, where Congress indicated that it did not intend to cover ultimate beneficiaries of Federal programs, such as Social Security beneficiaries, or——

Mr. **Jeffords**. Is that in the statute, or in the history?

Mr. **Marcus**. No, it's in the legislative history.

Mr. **Jeffords**. That's my problem.

Mr. **Marcus**. But these are—Mr. Jeffords, this is a very brief statute. We are dealing with a one-sentence statute, basically, that states a basic principle.

Mr. **Jeffords**. I understand all that. I want you also to understand I am in favor of the bill, but I am also on that side of the aisle which has got to give reassurance to my people that existing law only did what it was interpreted to do by the enforcers.

And what I am trying to grapple for is some way that we can try to slip a sentence or two in that will make clear that, for instance, in the 504 area where there is a regulation that says that we are going to only talk about grocery stores that employ more than a certain number of people, that's fine, that's great, but when somebody asks me where is the authority for drawing that line in the statute, and whether there's any authority to discriminate in that sense, I can't find any answer to that question.

Mr. **Marcus**. I think, first of all, I would argue two things. One, that when you are dealing with a basic simple statute such as this, that has both a legislative history and a long history of enforcement and a clear history of enforcement of distinguishing between ultimate beneficiaries and people who are operating federally assisted programs to provide services to ultimate beneficiaries, that you can rely on that history. It has not been a problem in enforcing these laws.

Second, I would argue that this bill, which has a limited simple, straightforward purpose, which is to overrule the *Grove City* case with respect to institutionwide coverage, once you clearly give Federal financial assistance to a recipient, then that bill is not the appropriate vehicle for trying to draw the fine lines that would have to be drawn if the Congress were going to define for all time, who is and who is not a recipient of Federal financial assistance.

Mr. **Jeffords**. Well, let me ask you this question. I don't want to take anymore time, we've got a vote on. I would like your help—I'm on your side—but I'd like to know as to whether or not a simple statement in the statute, itself, which says "We hereby embrace the thrust of the regulations which have been under this law and the practice which has occurred since the beginning of time", or something along those lines, would not allow the court to go beyond the clear language that they might defer to on the statute and say, "Well, we have to really legally take into consideration that history"?

Mr. **Marcus**. In principle, I would have no problem with that, but I see no reason why it can't be handled in legislative history, given the clear and limited purpose of this bill, or by given the fact that you are simply defining a term that is already in the statute.

Mr. **Jeffords**. I probably should leave your statement that you have no problem with that, but I would like to work with you on that. Thank you very much.

Mr. **Edwards**. We will recess for about 10 minutes because there is a vote in the Chamber, and if the witnesses don't mind, we will continue the questioning in a few minutes.

[Recess.]

Mr. **Edwards**. The committee and the subcommittee will come to order.

The gentleman from Maine, Mr. McKernan.

Mr. **McKernan**. Thank you, Mr. Chairman.

Mr. Marcus, I'd like to just explore a little bit more with you the question that I gather you realize serves some of us on this side. As one who is a cosponsor of H.R. 700 and who is extremely supportive of what it's trying to do, I'd just like to talk about that.

When you started your testimony, it sounded as though you were saying there really is no question about whether or not food stamp recipients are included, that they've never been considered to be included, and we shouldn't be worrying about that.

You then took that statement to say that, well, there is some question about it now because of whether or not recipients of student aid would be included, and then you went on to say your personal opinion was that they should be included.

I'm not sure where we're taking this because that's exactly the issue that many of us are trying to figure out—what the limits are.

Mr. **Marcus**. I'm sorry, Mr. McKernan, I perhaps was a little confusing in talking about ultimate beneficiaries, like food stamp recipients or social security beneficiaries or farmers under price support programs who never have been considered recipients and are clearly not treated as recipients under existing law.

Then I was talking about a closer question involving food stores who participate in the Food Stamp Program because at least one of the witnesses who has testified against the bill has said this bill would expand the civil rights laws by extending them to cover supermarkets and grocery stores who participate in the Food Stamp Program.

And my response to that was, I think they are covered under existing law. It's never been settled but, in any event, H.R. 700 would not affect that.

I'm sorry I confused you on the food stamp recipients. Ultimate beneficiaries, like food stamp recipients, Social Security beneficiaries, farmers, have never been considered recipients for purposes of these laws and, as I said to Mr. Jeffords, any question as to whether this bill inadvertently would affect that, I think, can be taken care of in the legislative history, as steps have already been taken to do.

Mr. **McKernan**. I think one of the problems that we're facing now, and it happens often in legislative arenas, is that as we address what most of us felt was an improper decision by the Supreme Court, I think—I'm not saying it was improper from a matter of law, they may have been right in the way they construed the statute, but we ought to change it if that is, in fact, the case—but as we open up this whole Pandora's box, other issues are being raised.

Many people feel, well, if we're going to address this issue, shouldn't we try to clarify a concern that is now being expressed, and that is what is hanging a lot of people up.

Do you think it is an appropriate construction of title IX, as my understanding is the way the Department at least construes it, that BEOG's are considered to trigger title IX but guaranteed student loans do not?

Mr. MARCUS. I think I would like to ask Mr. Tatal if I can put him on the spot, to respond to that because I think he may be more familiar with the title IX regulations than I am, but I certainly have no problem with the notion that Supreme Court set forth in the *Grove City* decision, that Federal assistance to students to pay their tuition at colleges is Federal financial assistance to those colleges, for purposes of the civil rights laws.

Mr. MCKERNAN. Mr. Tatal, I gather from Secretary Bennett who, in response to one of my questions, said that guaranteed student loans did trigger coverage, and then later on said, no, that's the one student financial program that does not because there is an exemption somewhere, I don't know whether it's in the regulations or elsewhere.

Mr. TATEL. I'm not sure I can completely answer the question, sir. It's my understanding that all student assistance that's in the form of grants do trigger the coverage provisions, but the statute contains a specific exemption for assistance—and I don't have the language here with me—but assistance by way, I think, of guarantees.

Mr. MCKERNAN. OK. That must be what he was talking about.

Mr. TATEL. So, loans, guaranteed student loans, probably do not.

Mr. MCKERNAN. I think that must be the exception that he was talking about.

Mr. TATEL. That's in the statute.

Mr. MCKERNAN. Let me just ask either of you to comment before my time runs out, on whether you think that food stamps and those types of programs where there is an ultimate beneficiary who is an individual, but then redeems those particular stamps at a store, ought to be included, whether we ought to be addressing that issue as part of 700, or whether we ought to just allow that question to remain.

Mr. MARCUS. Mr. McKernan, my own view is that I don't see any need to address that issue in H.R. 700. I think, under existing law, ultimate beneficiaries, such as food stamp recipients, are clearly not covered.

My own view is that grocery stores who participate in the Food Stamp Program and receive Federal funds for food purchases that otherwise would not be made at their stores, are kind of like the college in Grove City, and ought to be covered, and are covered under existing law.

Mr. McKERNAN. I guess that's the question that many of us have. The Federal Government did not seem to object to the inclusion of institutions because of the question of BEOG's. Now, maybe that was the statutory construction, but I think it's very difficult to distinguish between that situation and the food stamp situation.

Mr. MARCUS. As far as the stores are concerned, I think that's correct; not as far as the recipients of the food stamps are concerned, though. I think they are in a very different category, as are the farmers or the Social Security beneficiaries, but I think I would urge you—as I read H.R. 700, it does not address the question of who is a recipient of Federal financial assistance, it merely addresses the question of when you have somebody who is and he discriminates, is he violating the law even if he discriminates in a part of his activities that are not the part that receives the Federal funds, and it's solely addressed to that question.

Mr. McKERNAN. I understand that, and I think that most of us would agree that that ought to be changed, but that these other questions are going to interfere perhaps with doing that. Thank you.

Mr. EDWARDS. Mr. Hayes, the gentleman from Illinois.

Mr. HAYES. No questions.

Mr. EDWARDS. The gentleman from Texas, Mr. Armey.

Mr. ARMEY. Thank you, Mr. Chairman.

Let me see if I can make clear what our concerns are, and I speak here on behalf of a great many people, including small businessmen, small universities, farmers.

Do you gentlemen believe that it is the fundamental tenet of justice in America, that a person is innocent until proven guilty?

Mr. TATEL. Yes.

Mr. MARCUS. Yes.

Mr. ARMEY. Do you believe that there may be a great many Americans who might feel it an imposition on them to be required to testify to their innocence before any charge of violation of the law is made?

Mr. TATEL. Is your question, do I believe that people are concerned with that, or that that is a legitimate concern?

Mr. ARMEY. Is it a legitimate concern?

Mr. TATEL. If you are focusing on the question of the assurance of compliance, I think not.

Mr. ARMEY. You think not. In other words, if I were to ask you today, before you take a case funded by the Federal Government, that you give me a statement that demonstrates that you have not in the past killed anybody, do not intend to kill anybody, and are not at this moment killing anybody, that would not, in your estimation, be an implication that——

Mr. TATEL. If the Federal law said that as a recipient of Federal funds, I couldn't kill people, it wouldn't bother me a bit. In fact, I think it would be quite appropriate.

Mr. ARMEY. Can you conceive that there might be some very normal, ordinary, everyday American people who may so value their right to be considered innocent until proven guilty, that they might find it objectionable to testify to their innocence before anybody has levied a specific charge of guilt against them?

Mr. TATEL. Yes, of course, but I think here, sir, that we are balancing interests against one another, and people who feel that strongly probably ought not take Federal financial assistance.

Mr. ARMEY. OK. Well, this is my point. Now, do you believe then that people who feel that strongly might rightly be concerned about a law that threatens to extend the circumstances under which they may be required to make such a testimony?

Mr. TATEL. I said that I think that people like that probably ought not take Federal financial assistance because I believe that Congress has an obligation to be sure that people who receive funds not discriminate.

Mr. ARMEY. Should they have a right then to say, "Because I find it objectionable, that I would prefer not to have the Federal assistance rather than to comply with this requirement of compliance, not because I want to discriminate"?

Mr. TATEL. No, of course.

Mr. ARMEY. To protect my civil rights.

Mr. TATEL. Sure. And they are perfectly free not to accept Federal financial assistance.

Mr. ARMEY. Well, is there anything in this law that you can see that specifically would alleviate the concern of many people who have spoken to me, that mom and pop grocery stores who receive food stamps, will not be required to give such testimony?

Mr. TATEL. I think H.R. 700 doesn't deal with it one way or the other. In my experience at HEW, they were a relatively small, very small, group of recipients, out of the some 25,000 or 30,000 who——

Mr. ARMEY. So the answer is no.

Mr. TATEL. I'm trying to answer your question.

Mr. ARMEY. And the answer is no.

Mr. TATEL. Would you like me to answer your question?

Mr. ARMEY. I would like to have a yes or no answer. Is there any specific guarantee in this law that those people will be alleviated of that concern?

Mr. TATEL. No, of course not. Those people will have to comply if this law passes, with the rules and regulations that prevailed prior to *Grove City,* and those rules and regulations require that recipients of Federal funds sign assurance of compliance.

Now, whether a store of the kind you are talking about is or is not a recipient of Federal funds is not crystal clear.

Mr. ARMEY. Should welfare recipients or Social Security recipients be required, before they can receive these funds, to sign such a statement and present evidence of their innocence?

Mr. TATEL. No, of course not, because we have all agreed——

Mr. ARMEY. Is there anything in this law that prohibits such an imposition on these people?

Mr. TATEL. Yes.

Mr. ARMEY. What?

Mr. TATEL. The law says that pre-*Grove City* practices will prevail, and the pre-*Grove City* regulations of the Department provide that ultimate recipients are not covered, period.

Mr. ARMEY. But the fact is that pre-*Grove City* practices left this to the discretion of bureaucrats within Government agencies.

Mr. TATEL. The legislative history of the statute and the regulations which have been in effect for many years, provide specifically that ultimate recipients are not covered, and I have not heard anyone suggest that they should be.

Mr. ARMEY. But the fact is that some employees in a Federal bureaucracy decided that irrespective of any charge of discrimination, *Grove City* must be compelled to prove their innocence before they received indirect——

Mr. TATEL. That was not a bureaucrat, sir, that was an agency following its own regulations which require assurances of compliance which, by the way, was signed by the President of the United States.

Mr. ARMEY. The question I'm asking is, should an agency define what shall be the rights of the American people, or should the Congress define that?

Mr. TATEL. Sir, you have two choices. You can pass legislation which tries to deal with absolutely every issue that could come up or, as I understand the way Congress usually functions, it can pass general legislation with clear legislative intent, leave it to administrative discretion which is, by the way, enforceable, reviewable by the courts and the Congress.

Mr. ARMEY. Do you understand that there are a great many free and goodwilled Americans who feel that they suffer harassment from Federal bureaucracies day in and day out, without any just cause?

Mr. TATEL. I have no doubt about it. There are many more Americans, though, sir, who feel they are discriminated against in federally funded programs. And I think——

Mr. ARMEY. If somebody has a documented case of discrimination, is there any failure today for the law to provide them recourse for that documented case of discrimination?

Mr. TATEL. Oh, after the *Grove City* decision, the ability of people to use title IX, title VI, and section 504 to remedy discrimination is greatly narrowed.

Mr. ARMEY. I don't understand how that "after *Grove City*". Are you telling me——

Mr. TATEL. Well, let me try to explain. The way that happens is that the Supreme Court ruled in *Grove City* that the only part of an institution that can be investigated by an agency is that part of the institution which directly receives Federal financial assistance.

Prior to *Grove City*, the entire institution could be investigated. That's a very substantial narrowing. So, now, to go back to the example I used at the beginning, if the Department could not find Federal financial assistance in the computer sciences department, it could not even launch an investigation. That's a substantial narrowing of the law.

Now, you are absolutely right, in a sense, that for people who are discriminated against directly in federally funded programs or activities, *Grove City* is not a problem.

Mr. ARMEY. Now, my concern still is that there are so many people who believe that any avenue of spending, no matter how indirect, gives the Government a license to impose a requirement upon them to testify to their innocence irrespective of any charge of guilt.

Mr. Tatel. I understand that, and my answer is twofold. One, is the one I already gave, and that is that there are many more people who are victims of discrimination.

Mr. Armey. Now——

Mr. Tatel. Let me just finish. The second one is that these laws, like many other statutes—for example, the Internal Revenue Code—depend very much on voluntary compliance. The agencies don't, and shouldn't have, the resources to investigate every institution in the country.

The concept of an assurance of compliance is, I believe, an effective tool for voluntary compliance because it requires the head of the institution, before that institution accepts the funds, to——

Mr. Armey. Well, I can——

Mr. Tatel [continuing]. To understand that they are undertaking important obligations——

Mr. Armey. My time is fleeting here. So, your point is that in order to assure that there won't be a possible violation of one person's rights, I must make a certain violation of another person's rights.

Mr. Tatel. Well, I don't accept your assumption. I don't think you are violating someone's rights by asking them to sign a paper as a condition for receiving taxpayers' assistance.

Mr. Edwards. The gentleman's time has expired.

Mr. Armey. Well, it seems to me that that was an integral part of the quarrel that we had when we fought the fight to avoid loyalty oaths some years ago, and I'm not sure that I can see a great distinction between these two. Thank you.

Mr. Edwards. The time of the gentleman has expired.

Mr. Petri?

Mr. Petri. We went through some of that with the Solomon amendment on student loans, and it was decided that people could be required to, for instance, register for the draft as a condition of getting Federal money for their education.

I'm curious, if I could, Mr. Marcus, to explore a little bit the distinction between someone who is handling Federal money and someone who is an ultimate beneficiary of Federal money.

Evidently, being an ultimate beneficiary, though, does not end the chain because, if the ultimate beneficiary then takes that money and is not him or herself covered, he then can kind of recreate coverage when he spends that money in grocery stores. Is that correct?

Mr. Marcus. Well, as I said, Mr. Petri, I don't think the question of whether grocery stores who are participating in the Food Stamp Program are covered, has really been resolved by the courts. I think the difference is that the grocery store is not an ultimate beneficiary of the program in the same way as a food stamp——

Mr. Petri. No, it's after the ultimate beneficiary, though.

Mr. Marcus. Well, no, it's not after the ultimate beneficiary——

Mr. Petri. It's not administering the program in advance, it's receiving money from an ultimate beneficiary.

Mr. Marcus. Well, I would argue—and I think you could make an argument that they're not covered—but I would argue that the grocery store is much more than that, that the grocery store precedes the beneficiary in the sense that the beneficiary can't redeem his food stamps, can't use his food stamps, in a store that doesn't have an agreement to participate in the Food Stamp Program.

It has to meet certain criteria. It gets a set of materials from the Department of Agriculture, to tell it what it's got to do if it wants to participate in the Food Stamp Program, and which, incidentally, as my written testimony noted, contains a statement that the Food Stamp Program is available to all persons regardless of race, creed, color, sex, national origin, and so on.

And it seems to me that the grocery store is an integral part of the implementation of the federally financed program to serve the ultimate beneficiaries and, as I said in my testimony, I think it is perhaps certainly as clear a case for coverage as the private college that is the indirect beneficiary of the student loans.

Mr. PETRI. It would be the same because the student is the ultimate beneficiary, and then he takes the money and gives it to a school. Now, again, when we talk about, say, farmers not being covered because they are ultimate beneficiaries, that still is not quite as clear-cut because there are farmers and there are farmers.

And if you take, for example, the dairy program, as one, the farmers don't actually receive the money themselves. It goes to, and is usually handled by the processor—the cheese factory, or the dairy and the processor then sends milk checks every month to the farmers.

So, in that situation, would you feel that the cheese processing factory would be covered because it is handling and administering, in effect, a Federal program?

Mr. MARCUS. Well, it's an interesting question. I've never focused on it before. My own reaction would be, not necessarily. I think where someone is a mere conduit of money that way, that perhaps they wouldn't be covered, but I don't know that that question has ever been resolved.

Mr. PETRI. Well, the grocery store is a mere conduit of money.

Mr. MARCUS. I think the grocery store plays a somewhat different role, and the grocery store receives an economic benefit, just like the college in *Grove City*, in a very different way than the handler in your example.

Mr. PETRI. Well, so does the cheese factory. It pays the farmers and gets the—well, it's an interesting area.

Mr. MARCUS. Yes. I would just urge you, Mr. Petri, that I think that the key point to bear in mind here is that H.R. 700, as I understand it and as I read it, doesn't address these questions of who is a recipient and who isn't.

Mr. PETRI. What about contractors, independent contractors with, say, colleges or grocery stores? Would they be covered because they are getting money from these institutions?

Mr. MARCUS. Mr. Tatel would like to answer.

Mr. TATEL. I can't answer the question for grocery stores, but for the types of institutions that receive funding from either the Department of Education or Health and Human Services, the regulations have always provided that institutions which receive Federal funds must ensure that their contractors not discriminate either.

Mr. PETRI. So, it would cover someone who comes in to clean the grocery store, or repair the roof on the school, or whatever, is that correct?

Mr. **Tatel**. Well, H.R. 700 wouldn't change it. If it was covered before H.R. 700, it would be covered afterwards.

Mr. **Edwards**. The gentleman from Ohio, Mr. DeWine.

Mr. **DeWine**. Thank you, Mr. Chairman.

I think both witnesses have made it fairly clear that your opinion is that 700 does not change the question of who is the ultimate beneficiary.

I wonder if that is a question, though, that this committee should look at? Should we be looking at that? And if your answer is no, why not?

Mr. **Marcus**. I think it's a legitimate question for the committee to look at, but I would urge you not to try to solve everything in this bill.

I think the Supreme Court's decision in the *Grove City* case substantially narrows the coverage of the civil rights statutes. It is important, I believe, to overturn that decision and to re-establish institutionwide coverage where you have a recipient of Federal funds.

But I think the sorting out, the complete sorting out of who and who is not a recipient is an ambitious task. It is one that I don't think there is a great need for the committee to undertake, in the sense that the statutes have been administered, in the case of title VI, for 20 years now, without any substantial problems, and I think that we can all think of particular cases which might pose close questions, but the basic principle that ultimate beneficiaries are not covered is well established.

So, my answer to you would be, I don't see a great need to address the issue in this Congress, but I would urge you if you are going to address the issue, to do it in a context other than this bill.

Mr. **DeWine**. Do you think, though, that *Grove City* changes the ballgame in that sense? In other words, the argument that was made in the *Grove City* case and how you tied in the college, whether that's a good argument or bad argument, it seems to me it is a direct—you could extrapolate from that, as this committee has done, in discussion, clearly, into the food stamp question. I don't see any difference in that at all.

My only point would be, is we are into a different ballgame since the *Grove City*, decision even though you say H.R. 700, the way it is written, does not intend to change the question of the ultimate beneficiary.

The *Grove City* case has raised a lot more questions, and it would seem to me that this committee, or these committees, should be looking at that. Don't you think it has changed things since the *Grove City* Case?

Mr. **Marcus**. I think *Grove City* has changed things very dramatically with respect to institutionwide coverage, which is what this bill addresses. With respect to the question of whether *Grove City* was a recipient of Federal financial assistance, which was the other issue in *Grove City*, and I agree that the Supreme Court's holding there, one can extrapolate it in lots of ways—but I don't think it changed the law in that area either.

Certainly, the position of the administration had been that the student assistance resulted in the college also being a recipient of Federal financial assistance.

David, did you want to say anything?

Mr. **Tatel**. No.

Mr. **DeWine**. I don't want to belabor the point. It may not have changed the law, but it certainly nailed it down.

Let me move quickly into another area. Since both of you have served in the administrative side of our Government, I wonder if you could explain to me, as a practical matter. What is the value of a certificate of compliance?

If I say I am complying, how does the bureaucracy deal with that? You get that in and you look at the certificate of compliance, and if it's all right on its face, what happens? What I'm trying to see is how this actually ferrets out discrimination.

Mr. **Tatel**. I think that, as I said before, the Government agencies do not have the resources to review every institution that receives Federal funds, or respond to every complaint, and we must depend very heavily on voluntary compliance. And, in fact, I think that a great deal, a significant part, of the progress that's been made under these statutes has come about because institutions have complied voluntarily.

One very useful way to alert institutions about their obligations, and to encourage them to take them seriously, is to ask them to sign an assurance of compliance. Most presidents of universities, or superintendents of schools, or administrators of hospitals who sign one of these, I am confident, follow that up by being sure that their institutions are in compliance.

And by doing that, I think you would probably find, if you held hearings on the subject, and brought in heads of institutions, they would probably tell you that the assurance of compliance and other techniques the Department has used, have encouraged them to correct obvious problems under the statute, before the Department ever arrived.

I am convinced that that made a big difference in the late 1960's when small school systems throughout the South signed these assurances of compliance.

Mr. **DeWine**. Thank you very much. Thank you, Mr. Chairman.

Mr. **Edwards**. Well, we thank the witnesses for being very useful and helpful to us today. We do want to move along.

Mr. **Edwards**. We have one more panel and we hope to finish the panel with all the necessary and important questions that I know members of the two committees desire to ask.

Margaret Kohn, National Women's Law Center; Arlene B. Mayerson, representing the Disability Rights Education and Defense Fund, and Ron Vera, Mexican American Legal Defense and Education Fund.

Ms. Kohn, we welcome you and, without objection, the full statements of all three witnesses will be made a part of the record.

STATEMENT OF MARGARET KOHN, NATIONAL WOMEN'S LAW CENTER

Ms. **Kohn**. Thank you.

Mr. Chairman and members of the committee and subcommittee, I am Margaret Kohn, an attorney with the National Women's Law Center.

I am pleased to be here today to urge the quick passage of H.R. 700. This legislation is needed to assure that we have strong laws prohibiting discrimination on the basis of race, national origin, sex, disability and age.

Because I have worked particularly in the area of sex discrimination, my written testimony and my remarks, to a large extent, will be directed towards the title IX aspects of the bill.

Nonetheless, I do want to note that women face discrimination not only because of their gender, but also on the basis of race, national origin, disability, and age. Given the overlapping nature of discrimination, and the similarity of approach of the statutes, all aspects of this bill are of critical importance and are properly addressed together.

The *Grove City* decision seriously narrowed title IX's effectiveness both with respect to coverage and enforcement. Under the case, the receipt of Federal student aid was considered to cover only the college's financial aid program.

Therefore, after that decision, Grove City College was free to discriminate against students in math and science. So long as the Federal Financial Aid Program is not discriminatory, those student aid dollars flow with impunity throughout the college, supporting all of its activities, including its math and science departments.

The effects of this narrowing are beginning to be felt. The Department of Education has admitted in a court case, that it has closed, narrowed or suspended over 60 complaints, even after findings of discrimination have been made in some of these instances, on the grounds that it views its authority after the *Grove City* decision under title VI, title IX, section 504 and the Age Discrimination Act, to be significantly restricted.

I realize that the copies of the letters that I said are attached to my statement, are not, and we will make them available to the committee immediately after the hearing, but there are many documents that demonstrate the loss of protection to women and girls that has been a result of the Grove City decision.

Indeed, the 60-odd complaints are only the tip of the iceberg. The Department has not initiated reviews of schools' compliance with title IX that it otherwise would have conducted because of the *Grove City College* case. And we have documents, again, from litigation that support that.

We see a number of reviews now that are limited in their scope to the financial aid programs whereas, in the past, such reviews were not so limited.

Schools and other recipients are beginning to challenge whether they need to comply with title IX's nondiscrimination in many of their activities.

Recently, at a university's urging, a judge in a case in Pennsylvania, the *Haffer* v. *Temple University* case, said that after *Grove City*, title IX applies only to the athletic scholarships at Temple University and not to the whole range of problems of discrimination in intercollegiate athletic programs, which the students have complained about as plaintiffs in that case.

In Colorado, a judge has held that a physical education instructor's claim of sex discrimination in employment could not be pursued under title IX because the instructional areas in which she taught were not receiving Federal financial assistance under the *Grove City College* decision.

These examples are, unfortunately, only the beginning. H.R. 700 puts the four civil rights statutes back to where they were before *Grove City* was decided. It does nothing more, and nothing less.

It takes a simple and straightforward approach to avoid any good-faith charge of lack of clarity. The bill simply defines what is a program or activity in the major categories of coverage.

I would like to focus briefly on the ways in which the Dole bill, S. 272, is not an adequate substitute for H.R. 700 because many of the people who have testified before these committees have urged its passage instead of of H.R. 700.

Administration witnesses have testified before the committee in favor of the bill that Senator Dole introduced, as the vehicle through which the *Grove City* case should be overturned.

As the architects of the *Grove City College* decision and as those who believe the decision is correct, it is ironic to see these witnesses give their views as to what types of legislation will restore the laws to their pre-*Grove City* status.

Their current views reflect how narrow they still want coverage to be. The Dole bill only specifically overturns the *Grove City College* case for education institutions. It does not resolve what coverage would be outside of education, or outside of educational institutions, such as a State education department.

Because there is discrimination outside of education and because section 504, title IX, and the Age Discrimination Act go beyond education, and because section 504 has been narrowed, as has title IX, by a Supreme Court decision—the *Conrail* v. *Darrone* decision—which was issued the same day that the *Grove City* opinion was issued, it is necessary that the narrowness of *Grove City* be eliminated, both with respect to education and with respect to housing, transportation, social services, and health.

Moreover, the term "educational institution" is already defined in title IX. It is defined for purposes of exceptions to coverage in that law and, because it is defined and deals with exceptions, it is narrowly construed.

It can be as small as a department of a college. That is not institutional coverage. If the Dole bill passed, we could find ourselves with a codified version of the *Grove City College* case, covering only certain departments within a school or college.

Moreover, we have heard from administration witnesses that such a narrow result is precisely what they intend. They do not want all of the university covered. They do not even want all of the activities of a college covered under title IX.

Assistant Secretary Singleton, from the Department of Education, testified before this committee that to do so would broaden the law from where it was pre-*Grove City*. In his view, OCR could not attack the problems of segregated state systems of higher education unless Federal money could be traced to every campus but, in fact, the Department of Education has responsibility for systemwide desegregation of many higher education systems in the South that has been the subject of litigation, and their obligations to address systemwide discrimination has been affirmed by the courts.

Mr. Singleton also suggested that a campus-owned and operated restaurant might not be covered. His views of past coverage are as skewed now as they were when the government asked the Supreme Court to rule as it did in *Grove City*, for narrow construction, and this narrow construction is what the Dole bill would perpetuate.

It is important that H.R. 700 move quickly to clarify that, indeed, broad coverage and effective enforcement is required.

We have seen the Department of Education begin to close cases and narrow its efforts. Federal dollars will now be flowing to institutions which even the Department of Education has found to discriminate.

Moreover, the amount of Federal dollars at issue is enormous. When title IX was promulgated, the House report listed many categories of Federal financial assistance covered by the statute, from basic educational opportunity grants, to guaranteed student loans, to construction moneys, and to all of the grants and contracts and research programs. The list was long, and it has grown longer since then.

I'd like to stress here that the *Grove City College* decision, when it was before the district court, determined that guaranteed student loans were Federal financial assistance. It did determine that there couldn't be termination of those funds, but they found that they were Federal financial assistance.

Such funds are essential to the existence of many private colleges, as Mr. Conyers stated earlier today, and it has—and the guaranteed student loan, I think it is important to keep in mind, is something more than a guarantee. It is also a very sizable interest subsidy, and it has, in the past, been considered Federal financial assistance by the Department of Education, quite consistently.

Obviously, that billions of Federal dollars could be used to support discrimination is simply unacceptable. The rights of women, minorities, disabled persons, and older Americans depend on Congress' speedy action to correct this wrong. Thank you.

[Prepared statement of Margaret Kohn follows:]

PREPARED STATEMENT OF MARGARET A. KOHN, NATIONAL WOMEN'S LAW CENTER

Mr. Chairmen and members of the Subcommittees, I am Margaret A. Kohn, an attorney with the National Women's Law Center. I am pleased to be here today to urge the quick passage of H.R. 700. This legislation is needed to assure that we have strong laws prohibiting discrimination on the basis of race, national origin, sex, disability and age. However, because I have worked particularly in the area of sex discrimination, my testimony will be directed toward the Title IX aspects of the bill. Nonetheless, I do want to note that women face discrimination not only because of their gender, but also on the basis of race, national origin, disability and age. Given the overlapping nature of discrimination, and the similarity of approach of the statutes, all aspects of this bill are of critical importance and are properly addressed together.

In 1972, Rep. Patsy Mink summed up the compelling need for Title IX. Her words are as true today as they were 12 years ago:

"Any college or university which has [a] . . . policy which discriminates against women applicants . . . is free to do so under [Title IX] but such institutions should not be asking the taxpayers of this country to pay for this kind of discrimination. Millions of women pay taxes into the Federal treasury and we collectively resent that these funds should be used for the support of institutions to which we are denied equal access." 118 Cong. Rec. 5806–5870 (1972)

Since 1972, we have worked on issues of sex equity in education, with a particular emphasis on Title IX to assure fair treatment of women and girls. I have been co-counsel for parties or represented amici curiae in many of the Title IX cases which have been brought in the courts. In particularly, I was cocounsel representing the American Association for University Women (AAUW), et al. in the *Grove City College* v. *Bell* case in the Third Circuit Court of Appeals and in the Supreme Court. In fact, the Third Circuit opinion cited to and relied upon the brief filed by AAUW in support of its holding that student aid brought the entire school within the scope of Title IX.

The Supreme Court's reversal of the Third Circuit's holding on this point, and the Supreme Court's acceptance of a narrower interpretation of the scope and coverage of Title IX, seriously impair the law's effectiveness as a tool to end sex discrimination in education. Given the fact that Title IX is the only federal law which protects both students and employees in education, its weakening is particularly serious.

TITLE IX HAS MADE IMPORTANT HEADWAY IN COMBATING SEX DISCRIMINATION IN EDUCATION, BUT MUCH DISCRIMINATION REMAINS

Title IX has made a real contribution towards sex equality in education. It has opened up scholarships, particularly in the area of athletics, so that young women have a chance to secure a higher education through their athletic ability. It has provided an awareness of the problem of sexual harrassment in schools, and a mechanism for dealing with the problem. It has opened the door of many graduate professional programs such as law and medicine to women.

But much remains to be done. For example, we still see enormous disparities between the vocational opportunities given to young men and women. Vocational education enrollment remains highly sex-segregated and sex-stereotyped, mirroring the employment patterns in the workforce. In 1980, within federally-funded vocational programs women were concentrated in traditionally female course areas of home economics, health, office occupations, and consumer and homemaking programs; men dominated agricultural, technical, trade and industrial programs. League of Women Voters Education Fund, Achieving Sex Equity in Vocational Education 4 (1982). Recent progress in enrolling women in a more varied range of options has been most evident in those areas which are least sex-stereotyped as male or female, or which are considered male domains but viewed as "light" and "clean" work—graphic arts, applied design and electronic accounting. Id. at 13.

The following chart from the report of the National Advisory Council on Women's Education Programs, Increasing Sex Equity 1980 Update 6 (1982), summarizes the enrollment patterns of women in vocational education programs in recent years:

WOMEN ENROLLED IN NONTRADITIONAL, MIXED, AND TRADITIONAL VOCATIONAL PROGRAMS BY OCCUPATIONAL TRAINING AREA AND YEAR, UNITED STATES

[In percent]

	1972	1976	1978	1980
Nontraditional: Total	5.4	8.8	11.1	12.5
Trade and Industry	5.4	7.8	9.5	10.2
Agriculture	3.9	9.6	13.1	16.6
Distributive Education	14.6	23.4	16.7	17.2
Technical	8.6	12.2	16.7	19.0
Mixed: Total	50.5	51.8	55.7	59.0
Trade and Industry	40.6	38.0	46.7	53.0
Agriculture	26.9	40.5	45.0	44.6
Distributive Education	46.3	48.7	52.2	55.9
Health	63.2	56.1	57.7	69.8
Business	56.8	57.1	60.5	61.5
Technical	31.8	40.6	46.2	51.5
Traditional:[1] Total	86.7	85.8	85.7	86.7
Trade and Industry	87.1	85.1	86.2	89.6
Health	90.9	89.2	89.3	91.6
Home Economics	86.1	84.7	82.5	80.7
Business	86.0	85.4	85.6	86.3

[1] Definitions of nontraditional, mixed, and traditional programs are based on the percentage of women enrolled in vocational education courses nationally in 1972. Nontraditional programs are those in which the enrollment of women in 1972 was 0.0 to 25%. Mixed programs are those in which the enrollment of women in 1972 was 25.1% to 75.0%. Traditional programs are those in which the enrollment of women in 1972 was 75.1% to 100%.

SOURCE: Based on 1972–1978 data from U.S. Department of Health, Education, and Welfare, Bureau of Occupational and Adult Education (BOAE); 1980 data from U.S. Education Department, National Center for Education Statistics, Vocational Education Data System (VEDS).

The least progress has been seen in the building trade areas—for example masonry, electricity and plumbing—in which few women enroll, and few yet complete the program. Id. at 14. As of 1980, enrollment of women in none of the following thirteen categories exceeded five percent:

Program:	Percent
Air Conditioning	2.7
Body and Fender Repair	3.0
Auto Mechanics	4.6
Carpentry	4.5
Masonry	2.3
Plumbing and Pipefitting	2.7
Diesel Mechanics	2.3
Electrical Occupations	3.9
Sheet Metal Occupations	3.7
Tool and Die	4.2
Other Metalworking	4.7
Fire Fighter Training	4.8
Small Engine Repair	4.0

Increasing Sex Equity 1980 Update, supra, at 7.[1]

We see wide gaps in the athletic scholarships given to men and women. We see little progress in employment of women in education in the better paying supervisory and administrative jobs in schools districts and in higher ranks of university faculties. Title IX is needed as much as ever, not only to retain the gains we have made, but to secure continued progress that women in this country deserve.

The *Grove City* decision seriously narrows title IX's effectiveness, both with respect to coverage and enforcement.

Under the *Grove City* case, the receipt of federal student aid was considered to cover only the college's financial aid program. Therefore, Grove City College is free to discriminate against students in its math or science program, yet so long as the financial aid program is not discriminatory the federal student dollars can flow with impunity to its general fund, supporting all of the college's activities including its math and science departments.

The effects of this narrowing are beginning to be felt. The Department of Education has admitted that it has closed, narrowed or suspended over 60 complaints, even after a finding of discrimination has already been made, on the grounds that in its review after the *Grove City* decision, Title VI, Title IX, Section 504 and the Age Discrimination Act no longer prohibit the discrimination. Copies of some of the Department of Education letters are attached to my statement. They are a graphic demonstration of the loss of protection women and girls have suffered when *Grove City College* was decided.

However, those sixty-odd complaints are only the tip of the iceberg. The Department has not initiated reviews of schools' compliance with Title IX it otherwise would have conducted because of the *Grove City College* case. We see a number of reviews now which are limited in their scope to the financial aid programs, whereas in the past we did not see reviews which were so limited.

Schools are beginning to challenge whether they need to comply with Title IX's non-discrimination in many of their activities. Recently, at the University's urging, a judge in a case in Pennsylvania said after *Grove City,* Title IX only applies to athletic scholarships at Temple University, and not to the whole range of problems of discrimination in the intercollegiate athletic program which the students complained about.[2] In Colorado, a judge held that a physical education instructor's claim of sex discrimination in employment could not be pursued under Title IX because the instructional areas in which she taught were not receiving federal financial assistance under the *Grove City College* case.[3] These examples are only the beginning.

H.R. 700 Restores the Law to Its Former Strength.

H.R. 700 puts the four civil rights laws back to where they were before *Grove City* was decided. It does nothing more and nothing less.

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[1] It is difficult to secure more current figures because key data collection efforts have been suspended by the federal government.

[2] *Haffer* v. *Temple University,* No. 80-1362 (E.D. Pa. 1985) (order to strike all Title IX allegations from the complaint except those concerning athletic scholarship and financial aid programs).

[3] *Mabry* v. *State Bd. for Community Colleges,* 587 F. Supp. 1235 (D. Colo. 1984).

It takes a simple and straightforward approach to avoid any good faith change of lack of clarity. The bill simply defines what is a "program or activity" in the major categories of coverage:

1. A state or local government agency or department is covered in its entirety if federal financial assistance is extended to any part;
2. When the aid goes to the entire state or local government, the entity distributing the funds is covered in its entirety, as well as the agency or department to which the funds are extended;
3. A university or system of higher education, local education agency or other education system is covered in its entirety if federal financial assistance is extended to any part;
4. A corporation is covered in its entirety if federal financial assistance is extended to any part; and
5. And for those other entities, not specifically listed, they will be treated analogously to the entities which are listed. Therefore, for example, a college, like a university, will be covered in its entirety if any part receives federal funds.

This approach of covering the entire institution is clearly consistent with what Congress intended when passing Title IX. When Title IX was pending, Representative Green explained:

> "The purpose of title [IX] is to end discrimination in all institutions of higher education. Yes, across the board. . . ." 117 Cong. Rec. 39256 (1971)

And it was only with such across-the-board coverage that Title IX could be the "strong and comprehensive measure" Senator Bayh described and clearly intended the law to be. 118 Cong. Rec. 5804 (1972)

Moreover, by modeling Title IX after Title VI of the 1964 Civil Rights Act, Congress adopted and approved a statutory scheme which had been interpreted to be strong, providing across-the-board coverage. Not only agency regulations and enforcement, but case law decided before Title IX was passed confirmed this broad approach under Section 601 of Title VI. See e.g. *United States* v. *Jefferson Co. Board of Education*, 372 F.2d 836 (5th Cir. 1966), aff'd en banc, 380 F.2d 385, cert denied sub nom *Caddo Parish Board of Education* v. *United States*, 389 U.S. 840 (1967); *Bossier Parish School Board* v. *Lemon*, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967); *Board of Public Instruction of Taylor Co.* v. *Finch*, 414 F.2d 1968 (5th Cir. 1969).

The enforcement sections of Title VI and IX (Sections 602 and 902) were also designed with care. Government agencies providing federal funds are obligated to provide an enforcement scheme which includes fund termination in the event that efforts to conciliate fail, or referral to the Justice Department for a court suit to secure the end of the discrimination. Where fund termination is used, the government is obligated to "pinpoint" the funds terminated. The "pinpoint' obligation was defnied in *Taylor County* v. *Finch*, supra, decided under Title VI before Title IX was passed. Under *Taylor County*, funds could be terminated if those funds "support" the discrimination. That test of support is now maintained by this bill. It is spelled out specifically in the bill to ensure that there is no confusion—in fact, coverage is broader than fund termination and the test for fund termination in H.R. 700 is the test in use in *Taylor County*.

Moreover, since Title IX was passed, Congress has consistently refused to narrow its scope. As was true for Title VI, HEW promulgated regulations tracing the Title VI approach and broadly interpreting the scope of Title IX. See 34 C.F.R. Part 106. The regulations were approved by the President and sent to Congress for review.[4]

Congressman O'Hara held six days of hearings on the Title IX regulations. He described the hearings as designed to determine "whether or not the regulations as they are written are consistent with the law, or whether they should be returned to the agency for redrafting until they are consistent with the law from which they must draw their authority." Hearings on Title IX Before the Subcommittee on Postsecondary Education of the House, Committee on Education and Labor, 94th Cong., 1st Sess. 97 (1975). Proposed concurrent resolutions that would have disapproved the regulations were not approved by either House of Congress.

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[4] Pursuant to the General Education Provisions Act, 20 U.S.C. § 1232, Title IX regulations could not become effective until Congress has had 45 days to review the regulations and to reject them. Although the statute was later amended to provide that failure to disapprove regulations did not constitute a finding of consistency with the underlying legislation, see 20 U.S.C. § 1232(d), the regulations were finalized before the law was so amended.

Congress has also consistently refused to approve express efforts to limit the coverage of Title IX to programs and activities directly receiving federal funds. One such effort was an amendment introduced by Senator Helms in 1975. He explained:

> ["t]he bill provides that Title IX shall apply only to education programs and activities which directly receive federal financial assistance * * *.

122 Cong. Rec. 23846 (1975). Senator Helms' bill was not passed.

Given these overwhelming indications of Congress' intent to create a broad-reaching statute, one might well ask how a majority of the Supreme Court decided *Grove City* as it did. In fact, it is important to keep in mind that this information was never presented to the Court by either party in the case. The two opposing parties were Grove City College and the government. Once the government switched its position in the Supreme Court, neither side supported the view that institution-wide coverage was intended by Title IX. Moreover, the government refused to support a petition to the Court that third parties be given time to present arguments in favor of institution-wide coverage to the Supreme Court. Therefore, the Court decided this most critical of issues without hearing from anyone who supported the original long-standing position of the government.

THE DOLE BILL IS NOT AN ADEQUATE SUBSTITUTE

Administration witnesses have testified before this Committee in favor of the bill introduced by Senator Dole (S. 272) as the vehicle through which the *Grove City* case should be overturned. As the architects of the *Grove City College* decision, and as those who believe the decision is correct, it is ironic to see these witnesses give their views as to what types of legislation will restore the laws to their pre-*Grove City* status. And their current views reflect how narrow they still want coverage to be.

The Dole bill only specifically overturns the *Grove City* case for educational institutions. It does not resolve what coverage would be either outside of education, or outside of educational institutions (such as state education agencies). Mr. Reynolds, Assistant Attorney General for Civil Rights, testified that he thinks that if the Dole bill passed, all of these other areas would remain "program-specific" as defined by the *Grove City* case.

Moreover, the term "educational institution" is defined in Title IX currently, for purposes of certain exceptions to coverage in the law. Because it deals with exceptions to coverage, it is defined narrowly and can be as small as a department. If the Dole bill passed, we could find ourselves with a codified version of the *Grove City* case, covering only certain departments within a school or college.

Moreover, we hear from Administration witnesses that such a narrow result is precisely what they intend. They do not want all of a university covered. They do not want all of a university system covered. They do not even want all of the activities of a college covered under Title IX.

Assistant Secretary Singleton, of the Office for Civil Rights (OCR) in the Department of Education, testified before this Committee that to do so would broaden the law from where it was pre-*Grove City*. In his view, pre-*Grove City*, OCR could not attack the problems of a segregated state system of higher education unless federal money could be traced to every campus. In his view, money-raising activities for intercollegiate athletics, even though conducted in a sex-discriminatory way, if conducted by the university off campus, would not be covered. In his view, even a campus-based restaurant might not be covered.

His views of past coverage are as skewed now as they were when the government asked the Supreme Court to rule as it did in *Grove City*. And this narrow coverage is precisely what the Dole bill would perpetuate.

PROMPT ACTION IS NEEDED

It is important that H.R. 700 move quickly, to clarify that indeed broad coverage and effective enforcement is required. We have seen the Department of Education begin to close cases and narrow its efforts. Federal dollars will now be flowing to institutions which even the Department of Education has found to discriminate. Moreover, the amounts of federal dollars at issue are enormous. When Title IX was promulgated, the House Report listed many categories of federal financial assistance covered by the statute. H.R. Rep. No. 5544, 92nd Cong., 1st Sess. (1971), reprinted in [1972] U.S. Code Cong. & Admin. News 2462. From Basic Education Opportunity Grants to Guaranteed Student Loans to construction monies to myriad grant and contract programs, the list was long. All of these categories still exist, and many new funding programs have been added.[5]

That billions of federal dollars could be used to support discrimination is simply unacceptable. The rights of women, minorities, disabled persons and older Americans depened on Congress' speedy action to correct this terrible wrong.

Mr. **Edwards**. Thank you very much, Ms. Kohn.

Arlene B. Mayerson represents the Disability Rights Education and Defense Fund.

STATEMENT OF ARLENE B. MAYERSON, DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

Ms. **Mayerson**. Thank you, Mr. Chairman.

I am Arlene Mayerson, directing attorney of the Disability Rights Education and Defense Fund. Disability Rights is a national organization dedicated to securing equal opportunity for 36 million disabled Americans.

I have submitted written testimony on behalf of 19 other national disability organizations, which sets forth the legislative history and administrative interpretation of section 504, which demonstrates Congress' intent to broadly prohibit discrimination by recipients of Federal financial assistance.

Therefore, I will not use my limited time here to restate those points. Instead, I would like to address some of the issues that have been raised in testimony on H.R. 700.

I would like to first address the assertion and testimony from the administration and others here that we now live in a discrimination-free society. Mr. Reynolds states that we are on the brink of victory in this area.

Our office, like the others I speak for, receive calls every day from disabled people who have been denied jobs for which they are qualified, who are denied admission to higher education programs because their chosen field is not considered appropriate for someone with a disability, and from thousands who are literally prisoners in their own homes or in institutions because there is no accessible transportation.

We hear from parents who have been struggling for years to get basic educational opportunity for their disabled children.

If my experience is for some reason not considered representative, Mr. Reynolds, and Mr. Armey for that matter, need only read the U.S. Civil Rights Commission report published in 1983, entitled "Accommodating the Spectrum of Individual Abilities to Understand the Role of Discrimination in the Daily Lives of Disabled People."

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[5] The District Court in *Grove City College* held that Guaranteed Student Loans are federal financial aid to school but are not federal financial assistance subject to government enforcement under Title IX on the grounds that they fit within the statutory exception of contracts of insurance or guaranty. Because the GSL program provides a substantial interest subsidy as well as special allowance payments in addition to the guaranty, all past administrations correctly took the position that the GSL program goes beyond the exemption and is included. However, the Justice Department dropped the appeal on this issue originally taken by the government, so that the *Grove City College* case ultimately dealt only with Basic Education Opportunity Grants. See Hearings Before the Committee on Education and Labor, Subcommittee on Postsecondary Education, House of Representatives concerning Guaranteed Student Loans on May 13, 1982. In fact, Guaranteed Student Loans are not "contracts of insurance or guaranty" as that phrase is used in Title VI and Title IX.

Disabled people continue to be the most unemployed, underemployed and poor people of this Nation. No, 1985 does not mark the brink of victory for disabled Americans and other minorities, it marks a crossroads.

A decade of tremendous progress for disabled people will come to a halt and the promise of equal citizenship extended by Congress in 1973 will be ripped away if H.R. 700 is not passed by this Congress.

At the outset, I would like to dispel any contention that the *Grove City College* decision only affected and, therefore, legislation to overturn it should only address, educational institutions under title IX.

As Ms. Kohn noted, on the same day that Grove City was decided, the Supreme Court decided a section 504 case, *Consolidated Rail Corporation* v. *Darrone.*

On the one hand, that case was a tremendous victory in that the Supreme Court upheld Congress' intent to broadly prohibit disability based employment discrimination under section 504.

However, the Supreme Court also made clear that the narrow interpretation of program in *Grove City* applied with full force to all areas under section 504. Conrail was, of course, not an education case.

In fact, the Court remanded the case for a determination on the program issue even though it was undisputed that Conrail received over $3 billion in unrestricted Federal funds.

The devastating effects of the *Grove City* and the *Darrone* decisions can already be seen in post *Grove City* case law and Federal administrative action. I am not going to review the administrative action because I think Ms. Kohn adequately did so.

There have been cases, however, in the lower courts since the *Grove City* decision. Two employment cases relied on that decision to suggest that the plaintiffs would have to show that their salaries were actually to be funded with Federal funds.

The employment protection for disabled citizens are threatened by court decisions such as these. Section 504, at this point, no longer guarantees what Congress intended it to guarantee, which is that federally funded employers will not discriminate.

The negative effects of *Grove City* do not stop with employment or education cases. *Jacobson* v. *Delta Airlines* involved Delta's requirement that all handicapped persons sign a so-called medical release form as a condition of flying.

The person must swear "I understand that I may be removed at any point if it becomes necessary, for the comfort or safety of other passengers."

The court held that the policy was, indeed, discriminatory, but relying on *Conrail* v. *Darrone,* held that section 504 was inapplicable because although the airline received Federal assistance in the form of subsidies for small community services, the discrimination did not take place on one of these routes.

No relief was granted by the Supreme Court, despite the fact that the discriminatory policy applied to all Delta flights.

Having established a concrete harm to disabled people seeking to address discrimination claims, I turned to the other allegations of our opponent, most notably Mr. Reynolds.

Mr. Reynolds attacked H.R. 700 with the most extreme scare tactic rhetoric. Mr. Reynolds tells the Congress that H.R. 700 is the excuse for opening virtually every entity in this country, to Federal supervision, regulation, intervention, intrusion and oversight, and that it will "stretch the tenacles of the Federal Government to every crevice of public and private sector activity."

Based solely on this exaggerated description of H.R. 700, one would never know that the bill merely seeks to ensure, consistent with the original intent of Congress, that programs operated by Federal grantees are nondiscriminatory.

I think it is of the utmost importance to realize that Mr. Reynolds' rhetorical flourishes are not new. Precisely the same objections were lodged by the opponents of title VI in 1964, and in almost precisely identical terms.

Title VI, it was said, would "grant the most extraordinary powers to the Executive Department," and "would touch every segment of society in business."

One quote that is almost virtually identical was by Representative Ashmore, who claimed that "virtually every nook and cranny of the private lives of individual Americans would be touched and tainted by this obnoxious proposal."

Just as these allegations were correctly disregarded in 1964, they should be rejected again in 1985.

An analysis of H.R. 700 demonstrates the fallacy of Mr. Reynolds' allegations. As pointed out by Mr. Marcus, current agency regulations define "Federal financial assistance" and define "recipient," for purposes of the nondiscrimination statutes.

This threshold inquiry is not altered by H.R. 700. H.R. 700 only addresses the scope of coverage once an entity has been deemed a recipient of Federal financial assistance.

Hence, all allegations that H.R. 700 extends coverage to recipients never before covered are false. In fact, the definition of "program" in H.R. 700 is consistent with the Department of Justice's own definition under section 504.

That regulation defines the term program to mean "the operation of the agency or organizational unit of government receiving Federal assistance, e.g., a police department or department of corrections."

Yet, Mr. Reynolds appeared before this committee and stated that the reference in H.R. 700 to a department or agency of a State or local Government, all the operations of which are covered if any part receives Federal funds, opens the way for the first time to a nonfunded activity of a state agency to be subject to Federal compliance reviews because some other activity of the agency was funded. That's a quote.

Lest there be any doubt that the current Department of Justice regulation is consistent with H.R. 700 and inconsistent with Mr. Reynolds' statement, I refer you to the official Justice Department analysis of that section which was published at the time of promulgation, which stated:

> The receipt of federal financial assistance by, for example, a law enforcement agency or department of corrections, makes Section 504 and this subpart applicable to all operations of the recipient agency or department although the federal finan-

cial assistance may have been used in only certain of the programs or operations of the agency or department.

Finally, I would like to conclude by stressing that many of the allegations about H.R. 700 are no more than thinly disguised attacks on the Federal role in civil rights enforcement which has been in existence since 1964. Disabled people depend on that role and on section 504 for basic civil rights protection.

Disabled people are just beginning to be integrated into the American mainstream. Passage of H.R. 700 is essential to continue the progress made over the last decade.

The progress has been a source of pride to disabled people and to all Americans. Thank you.

[Prepared statement of Arlene B. Mayerson follows:]

PREPARED STATEMENT OF ARLENE B. MAYERSON, DISABILITY RIGHTS EDUCATION AND DEFENSE FUND

Mr. Chairman and members of the Subcommittee, I am Arlene Mayerson, directing attorney of the Disability Rights Education and Defense Fund. DREDF is a national organization dedicated to securing equal opportunity for 36 million disabled Americans. I appear here also on behalf of nineteen other such organizations.

I have submitted written testimony which sets forth the legislative history and the administrative interpretations of Section 504 which demonstrate Congress' intent to broadly prohibit discrimination by recipients of federal financial assistance. My written testimony, like my oral testimony last year, also emphasizes the importance of Section 504 in assuring non-discrimination and therefore, pride and dignity to disabled Americans. Therefore, I will not use my limited time here to restate those points. Nor will I review the *Grove City* decision or the provisions of H.R. 700 because they have been addressed extensively by other witnesses.

Instead, I would like to address some of the issues that have been raised in testimony on H.R. 700, and to highlight the devastating effect that the *Grove City College* decision has and will continue to have in attaining the Congressional goal of equal opportunity for disabled Americans.

I would like to first address the implication in testimony from the Administration and others that we now live in a discrimination free society. Mr. Reynolds states we are at the "brink of victory" in this area. I would like to trade jobs with Mr. Reynolds for one month and then ask him this question. Our office, like the others I speak for here, receive calls every day from disabled people who have been denied jobs for which they are qualified because of antiquated medical standards, who are in institutions and nursing homes and want to get out but have nowhere to go, who are denied admission to a higher education program because someone has determined it is not an appropriate field for someone with a disability and from thousands who are literally prisoners in their own homes because there is no accessible transportation or what is available requires 48 hours notice and is restricted to medical appointments. We hear from parents who have been struggling for years to get basic educational opportunity for thier disabled children. And perhaps most significant are those who have been silenced—those who accept as their fate the inaccessibility and discrimination which denies them the right to move freely in society—to contribute—to belong. If my experience is not considered representative, Mr. Reynolds need only read the U.S. Civil Rights Commission Report, "Accommodating the Spectrum of Individual Abilities," Clearinghouse Publication 81 (Sept., 1983) to understand the role of discrimination in the daily lives of disabled people. Disabled people continue to be the most unemployed, underemployed and poor people of this nation. No, 1985 does not mark the brink of victory for disabled Americans. It marks a cross-roads. A decade of tremendous progress for disabled people will come to a halt and the promise of equal citizenship extended by Congress in 1973 will be ripped away if H.R. 700 is not passed by this Congress.

At the outset, I would like to dispel any contention that the *Grove City College* decision only affected, and therefore legislation to overturn it should only address, educational institutions under Title IX. On the same day that *Grove City* was decided, the Supreme Court decided a Section 504 case, *Consolidated Rail Corp,* v. *Darrone,* 104 S.Ct. 1248 (1984). On one hand, that case was a tremendous victory in that it resolved five years of litigation in the lower courts concerning the scope of employment coverage under Section 504. The Supreme Court unpheld Congress' intent to broadly prohibit disability based employment discrimination under Section 504. However, the Supreme Court also made clear that the narrow interpretation of program in *Grove City* applied with full force to all areas under Section 504. In fact, the Court remanded the case for a determination on that issue even though it was undisputed that Conrail received over three billion dollars in federal funds. (p. 1251).

The devastating effects of the *Grove City* and *Darrone* decisions can already be seen in post *Grove City* case law and federal agency action. Just two months after *Grove City* was decided, the U.S. Department of Education issued a memorandum directing all Regional Offices to reconsider the jurisdictional basis for all complaints filed under Title IX, Title VI, and Section 504. Investigations were suspended in over 61 cases against colleges and universities. Thirteen of these were Section 504 claims of which 11 were claims of employment discrimination. As of February 1985, three of these cases have been closed. The remainder were reopened for reexamination for jurisdiction. Disabled people's claims of discrimination are being denied or significantly delayed. The grave impact which *Grove City* has no federal agency monitoring and enforcement has just begun.

The lower courts have also followed *Grove City* to narrow the protections guaranteed under Section 504. For example, *Meyerson* v. *State of Arizona,* 740 F.2d 684 (9th Cir., June 1984), involved a deaf psychology professor who brought an employment discrimination claim against the University of Arizona. The Ninth Circuit, citing to *Grove City,* remanded the case and directed the court to look at whether the discrimination had occurred in a specific program or activity receiving Federal financial assistance.

In another case, a school teacher claimed that she was being discriminated against by her school district. *Bradford* v. *Iron County C-4 School District,* 36 FEP cases (E.D. Mo. 1984). The district received unrestricted federal funds which were placed in the general funds. Even though the court allowed the case to proceed, the court left open the possibility that the defendant-employer could avoid liability if it could show that the teacher's salary was not paid from the same source as the unrestricted funds.

The employment protections of many disabled citizens are threatened by court decisions such as these. Employees are being required to show that their salaries are actually being funded with federal dollars; if they cannot, they are being turned away by the courts. Section 504 no longer guarantees that federally funded employers will not discriminate.

The negative effects of *Grove City* do not, however, stop with employment or education cases. *Jacobson* v. *Delta Airlines,* 742 F.2d 1202 (9th Cir., Sept., 1984), involved the refusal by Delta Airlines to board a passenger with cerebral palsy. As described by the Court, Mr. Jacobson's "condition is neither contagious or progressive. He is married, holds a full time job as a computer program analyst . . In short, he leads a full and productive life. He cannot, however, walk without the assistance of another person." p. 1204. Delta requires all handicapped persons to sign a "so-called 'medical release form' " as a condition of flying. The form provides as follows:

> I understand that upon subsequently acquired medical advise [sic], Delta Airlines may refuse me passage or remove me at any point and refund the appropriate portion of my fare without further obligation. I understand that I may be removed at any point if it becomes necessary for the comfort and safety of other passengers. (p. 1204)

The court held that the policy was indeed discriminatory but, relying on *Conrail* v. *Darrone,* held that Section 504 was inapplicable because the discrimination did not take place in a "program or activity receiving federal financial assistance." The airline did receive Federal financial assistance in the form of subsidies for small community services; however, the court held that such payments subjected only the small community service program to the civil rights laws and that since the discrimination did not take place on one of these routes, no relief could be granted despite the fact that the discriminatory policy applied to all Delta flights. (Cf. *Paralyzed Veterans of America et al.* v. *CAB,* (D.C. Cir., Jan. 18, 1985)).

The Congressional mandate which provided broad antidiscrimination protection to 36 million Americans is being destroyed by the Courts and the federal agencies charged with enforcement because of *Grove City*. Court and agency decisions such as those cited above require plaintiffs or the regulatory agency to trace the federal dollars to the discriminatory act. Not only does this undermine civil rights protections, but it increases the burden of the federal agencies and grantees. Clearly, such a complete undermining of the purpose of the civil rights acts must be reversed.

Having established the concrete harm to disabled people seeking to redress discrimination claims, I turn to the other allegations of our opponents, most notably Mr. Reynolds. Mr. Reynolds attacks H.R. 700 with the most extreme scare-tactic rhetoric. Mr. Reynolds tells the Congress that H.R. 700 is "the excuse for opening virtually every entity in this country—public and private—to federal supervision, regulation, intervention, intrusion, and oversight," and that it will "stretch the tentacles of the Federal Government to every crevice of public and private sector activity" (p. 6). Based solely on the exaggerated description of H.R. 700, one would never know that the bill merely seeks to insure, consistent with the original intent of Congress, that the programs operated by federal grantees are open to all, regardless of race, gender, handicap, or age. Indeed, it is quite disturbing to those of us who cherish civil rights that the head of civil rights for the Department of Justice now urges that "legitimate claims to independence and pluralism" (p. 7) include the right to deny participation on the bases of race, gender, handicap, or age.

Moreover, it is of utmost importance to realize that Mr. Reynolds' rhetorical flourishes are not new. Precisely the same objections were lodged by the opponents of Title VI of the Civil Rights Act of 1964, in almost precisely the same terms. Title VI, it was said, would "grant the most extraordinary powers to the executive department" [1] and would "touch every segment of society and business." [2] Representative Ashmore claimed that "virtually every nook and cranny of the private lives of individual Americans would be touched and tainted by this obnoxious proposal." [3] Just as these allegations were correctly disregarded in 1964, they should be rejected again in 1985.

An analysis of H.R. 700 demonstrates the fallacy of Mr. Reynolds' allegations. Currently, agency regulations define "federal financial assistance" and "receipient" for purposes of the non-discrimination statutes. This threshold inquiry is not altered by H.R. 700. H.R. 700 only addresses the scope of coverage once an entity has been deemed a recipient of federal financial assistance. Hence, all allegations that H.R. 700 extends coverage to recipients never before covered are false.

Next, the definition of program in H.R. 700 is consistent with the Department of Justice's own definition under Section 504. That regulation defines the term "program" to mean "the operation of the agency or organizational unit of government receiving or substantially benefiting from the federal assistance awarded, e.g., a police department or department of corrections." [4]

Yet Mr. Reynolds appeared before this committee and stated that the "reference in H.R. 700 to 'a department or agency of a state or of a local government' "—all the operations of which are to be covered if any part receives federal funding—opens the way for the first time for a non-funded activity of a state agency . . . to be subject to federal compliance reviews because of some other, unknown and wholly unrelated, funded activity of that same state agency . . ." (pp. 9, 10).

Lest there be any doubt that the current D.O.J. regulation is consistent with H.R. 700 and inconsistent with Mr. Reynolds' statement, I refer you to the official Justice Department analysis to that section which states:

> The receipt of federal financial assistance by, for example, a law enforcement agency or department of corrections, makes Section 504 and this subpart applicable to all operations of the recipient agency or department although the federal financial assistance may have been used in only certain of the programs or operations of the agency or department.[5]

If there is any inconsistency among different agency interpretations, as Mr. Reynolds alleges, it is the job of his department as civil rights coordinator to assure consistency with the present D.O.J. interpretation.

Finally, there have been many allegations about Section 504 which have nothing to do with H.R. 700, but instead attack the feasibility of Section 504 itself. Opponents have raised questions about costs and "burdens" which have already been resolved—when the law was passed in 1973 when the regulations were promulgated in 1977 and when the statute was amended in 1978. The Section 504 regulations were the result of over a thousand comments, three proposed rules, and numerous hearings here and around the country. The objections of recipients were heard then and again in oversight hearings before the 1978 amendments. The regulations reflect a reasonable, flexible approach. Recipients of less than fifteen employees are excused from physical accessibility requirements. The whole notion of "program accessibility" allows flexibility and innovation in assuring that no one is excluded because of her/his disability. Congress reviewed these regulations in 1977 and approved and codified them in the 1978 amendments. This is not the forum to raise old objections once again. Many attacks on H.R. 700 are no more than thinly disguised attacks on the federal role in civil rights enforcement.

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[1] 118 Cong. Rec. 1515 (1964) (Remarks of Rep. Colmer).

[2] 118 Cong. Rec. 1588 (1964) (Remarks of Rep. Tuck).

[3] 118 Cong. Rec. 1619 (1964).

[4] 28 C.F.R. § 42.540(h).

[5] 45 Fed. Reg. 37632 (1980).

Disabled people depdend on that role and on Section 504 for basic civil rights protection. Disabled people are just beginning to be integrated into the American mainstream. Passage of H.R. 700 is essential to continue the progress made over the last decade. This progress has been a source of pride to disabled people and to all Americans.

Mr. **Edwards**. Thank you very much, Ms. Mayerson. We particularly appreciate your being very specific insofar as the allegations by some of our previous witnesses. It's very, very helpful.

The last member of the panel to testify is Mr. Ron Vera, representing MALDEF, Mexican American Legal Defense and Education Fund. Mr. Vera?

STATEMENT OF RON VERA, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

Mr. **Vera**. Thank you, Mr. Chairman.

On behalf of MALDEF, we do appreciate this opportunity to appear before you in support of H.R. 700, and to urge its passage by Congress.

I'd like to address my very brief remarks to the concerns that were addressed by the Assistant Attorney General Reynolds at the outset of these hearings.

As he indicated to this committee, it is a measure of our time that we come before you voicing our support for this act, and find ourselves at opposite ends of the fence with the U.S. Commission on Civil Rights and the Justice Department for, in Mr. Reynolds' view, these are, indeed, the best of times for civil rights.

With his "remarkable record of civil rights enforcement activity," he has, in his words, brought women, minorities, the disabled, and senior citizens to the brink of victory. What that victory is remains to be seen.

These are also the best of times for, as he states, "the citizens of this nation voted overwhelmingly to reduce Federal intrusion and interference in our daily lives."

Given these views, it is not surprising that the Justice Department can now state that "nothing suggested in the debates underlying this legislation even hints at the civil rights problems that were uncovered during the passage of the Civil Rights Act of 1964 or the other acts now affected by the *Grove City* decision."

But this charitable view of civil rights is not a view that is endorsed by MALDEF. Indeed, Mr. Reynolds' view as to the purpose of this legislation is misplaced when he focuses on the intrusive nature of this legislation, or whether we even need this act.

With all due respect to Mr. Reynolds and the Justice Department, that debate and those issues were answered 20 years ago. We do not have to answer those questions once again.

The true question before this committee and Congress is whether this legislation will, in a very specific way, overturn the program specific holding in the *Grove City* decision, or whether we will allow Federal funds to encourage or subsidize discrimination.

Let us look at the three main objections raised by Mr. Reynolds, to this bill. The first objection concerns the extent to which unrelated institution activity may be pulled into civil rights enforcement activity.

The extreme example he notes is that under this legislation, the University of California will now be affected in its entirety, as a system.

I guess my first response is, so what? The question is whether $1, $1 million, or $1 billion is going to flow to the University of California should the Federal Government be involved in any way if the University of California is found to discriminate.

The fundamental premise behind all civil rights laws is that they shall not encourage or subsidize discrimination in any form, and it is far preferable to discourage discrimination in this manner than to encourage the shifting of funds to escape civil rights obligations.

A second criticism voiced by Mr. Reynolds is the belief that the number and identity of recipients would be enlarged under the phrase of "any other entity" that is determined to be covered in a manner consistent with the coverage provided with respect to other entities.

And I believe he's saying that perhaps under this legislation, that the number of recipients may be covered or may be enlarged.

And I think the committee has heard ample testimony to the fact that this bill will not deal with the types of recipients that are affected by civil rights laws.

Indeed, in researching and preparing for this testimony, I found a lengthy letter that was sent by the Assistant Attorney General Katzenbach in 1964, to this committee, outlining and addressing all of the concerns that Mr. Reynolds voiced before this committee, and I believe many of these concerns can simply be answered by looking at his own internal correspondence to this committee.

The final concern of Mr. Reynolds and others is the fund termination provision that is now incorporated in H.R. 700, and I believe the majority staff report to this committee adequately and fairly explains how this provision will work, but it should also be noted that all other enforcement provisions are left intact, and that the Attorney General continues to have the discretion to secure compliance by any other means authorized by law.

Moreover, any fund termination must follow formal hearing procedures and, if a decision has been made to terminate funding, a report must be filed with this committee. So, I'm sure that any concerns that any person may have here on this committee about any fund terminations, they will surely know about it.

In summary, as we conclude this testimony, I believe very strongly that this legislative proposal should be enacted. It addresses all of the concerns that civil rights advocates have as to the narrowing of civil rights statutes that were uncovered by the *Grove City* decision but, more importantly, it ensures that this Government should not be involved in any way in subsidizing or encouraging discrimination in any form.

It was once said by Senator Humphrey that "the moral test of a government is not how it treats those individuals that stand in the full light of government benefits, but the moral test of a nation and the government is determined by how it treats individuals who are in the dawn of light, or in the twilight of light, or in the shadow of light," and these are the individuals that we seek to protect by this legislation. Thank you.

[Prepared statement of Ronald T. Vera follows:]

Prepared Statement of Ronald T. Vera, Mexican-American Legal Defense and Educational Fund

Mr. Chairman, and members of the committee, I am Ronald T. Vera, staff attorney with the Mexican-American Legal Defense and Educational Fund (MALDEF). MALDEF appreciates this opportunity to appear before you in support of the Civil Rights Restoration Act of 1985 and to urge its speedy passage by Congress.

As Assistant Attorney General Reynolds indicated to you at the outset of these hearings, it is a measure of our times that we come before you voicing our support of this act and find ourselves at opposite ends of the fence with both the United States Commission on Civil Rights and the Department of Justice as to the purpose of this bill.

In Mr. Reynold's view these are, indeed, the best of times for civil rights. With his "remarkable record of civil rights enforcement activity" he has, in his words, brought women, minorities, the disabled, and senior citizens to the brink of victory. These are also the best of times for, as he states, "The citizens of this Nation voted overwhelmingly to reduce Federal intrusion and interference in our daily lives." Given these views, it is not surprising that the Justice Department can now state that "nothing suggested in the debates underlying this legislation even hints at the civil rights problems that were uncovered during the passage of the Civil Rights Act of 1964 or the other acts now affected by the *Grove City* decision.

But this charitable view of civil rights is not a view shared by MALDEF nor by other supporters of H.R. 700. Indeed, Mr. Reynold's view as to the purpose of this legislation is misplaced when he focuses on the intrusive nature of this legislation or whether we even need this act. With all due respect to Mr. Reynolds, that debate and those issues were resolved twenty years ago.

The true question before this committee and Congress is whether this legislation will, in a very specific way, overturn the program-specific holding in the *Grove City* decision, and whether this act does so in harmony with the long line of statutory and court authority that have interpreted the various civil rights enforcement provisions that are now in jeopardy. We believe that it does. Let us look at the three main objections raised by opponents to this bill.

The first objection concerns the extent to which unrelated institution activity will be pulled into civil rights enforcement activity. As a extreme example, it has been noted that the University of California, as a system, will now be covered by the receipt of Federal financial assistance of any part of that system. But my response is, why should that be a problem if we are all in agreement, as Mr. Reynolds states "of sharing a revulsion for discrimination." The fundamental premise behind all civil rights laws is that Federal money shall not encourage or subsidize discrimination in any form.

Nor do I agree that the University of California is a system made up of unrelated campuses, each with distinct and separate identities. Moreover it is preferable to discourage discrimination in this manner, than to encourage the shifting of funds to escape civil rights obligations.

A second criticism is the belief that the number and identity of "recipients" would be enlarged under the phrase of "any other entity" that is determined (to be covered) in a manner consistent with the coverage provided with respect to (other entities). A variety of examples have been proffered, but in actuality these critics known that title VI does not cover all forms of Federal financial assistance and this bill will not change these forms in any way. Thus, almost all of the legendary examples that have been suggested will not occur since neither direct assistance to individuals constitutes aid nor does contracts of insurance or guaranty. Thus, when Mr. Reynolds wishes to know whether farmers or ranchers are covered if they receive price supports he need look no further than his own department for these interpretations.[1]

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[1] In 1963 the Attorney General took the position that direct aid to individuals does not constitute aid to a program or activity. See letter from Nicholas de B. Katzenbach, Deputy Attorney General, Department of Justice, to Rep. Emanuel Celler, Chairman, Committee on the Judiciary, House of Representatives, December 2, 1963, printed in "Hearings on H.R. 7152, as amended by Subcomm. No. 5, Before the House Comm. on the Judiciary," 88th Congress, 1st Session, ser. no. 4, pt. IV, 2772-2779 (1963). See also the United States Commission on Civil Rights report: "The Federal Civil Rights Enforcement Effort," 180-196, 370-371 (1971).

The final concern of Mr. Reynolds and others is the "fund termination provision" that is now incorporated in H.R. 700. The staff report to this act adequately and fairly explains this provision. But it should also be noted that all other enforcement provisions are left intact and the Attorney General continues to have discretion to secure compliance by "any other means authorized by law." Moreover, any fund termination must follow formal hearing procedures and if a decision has been made to terminate funding, a report must be filed with the appropriate House or Senate committee detailing the circumstances and grounds for the action.

This legislative proposal should be enacted. It addresses the concerns of civil rights advocates across the Nation and, at the same time, leaves intact all of the prior restraints on Federal Government intrusion. But more importantly, it insures that this Government shall not be involved in any way in tarnishing the opportunities of those groups that have been offered protection by the civil rights acts that we now seek to restore.

Thank you, Mr. Chairman. That concludes my prepared remarks and I would be happy to answer any questions from the committee or staff.

Mr. EDWARDS. Thank you very much, Mr. Vera.

Mr. Hawkins.

The CHAIRMAN. May I ask the witnesses to respond to one question, which I think is rather simple, and that is, why is the grandfather clause in S. 272 an insufficient clarification of the areas that go beyond education?

Ms. KOHN. The reason the grandfather clause is inadequate in Senate bill 272 is because it does not make clear that there must be a broad interpretation of program or activity in section 504, title VI and the Age Discrimination Act. It directs the courts and the agencies interpreting these statutes to ignore the Supreme Court decision in *Grove City College,* but it does not prevent the Supreme Court, or other courts, or agencies from doing the analysis that was done in the *Grove City College* decision, and reaching exactly the same result that the Supreme Court reached in *Grove City.* It does not prevent that, and we believe it is necessary to prevent that quite specifically.

The CHAIRMAN. Well, let me rephrase it slightly for Ms. Mayerson. I see she wants to answer as well.

Would it be possible for a court to disregard *Grove City,* but reach the same conclusion, by using reasoning other than that specifically relying on the *Grove City* reasoning as a precedent?

Ms. MAYERSON. I think it would be possible because there was a memo prepared by the general counsel of the Civil Rights Commission, and his reading of the grandfather clause in the Dole bill would keep all areas outside of education narrowly program-specific. So, there's a perfect example of how the grandfather clause can be interpreted by those who choose to, to maintain program specificity.

The CHAIRMAN. Well, may I just simply ask Mr. Vera, do you basically agree with the other two answers?

Mr. VERA. Yes, I do.

The CHAIRMAN. Thank you. Thank you, Mr. Chairman.

Mr. EDWARDS. The gentleman from Texas, Mr. Armey.

Mr. ARMEY. I gather that all three of you fully endorse the bill as it is written?

Ms. KOHN. Yes.

Ms. MAYERSON. Yes.

Mr. VERA. Yes.

Mr. ARMEY. And you've all read the bill?

Ms. Kohn. Of course.

Mr. Armey. So that if I read the bill with respect to the sections interpreting program or activity, I can rightly guess that perhaps a student studying economics at, say, East Texas State University, may be denied access to his continued education, through denied funding, to that school because a sociology department at the University of Texas at El Paso discriminated in one manner or another, or failed to file a compliance certificate, is that correct?

Ms. Kohn. No.

Mr. Armey. No. Well, what would be the case then?

Ms. Kohn. The reason that's not correct is because though there is coverage and there would be a finding of discrimination there, fund termination remedy, which would be the only remedy that would lead to this student's losing his support to attend the other institution, the fund termination remedy is a now remedy. It is pinpointed. And this bill provides that only the funding which supports the discrimination would be terminated. Therefore, there wouldn't be funds terminated at the East Texas University where the economics student was studying.

Mr. Armey. Well, then, could you clarify for me why it is necessary to define a program or activity in such a broad manner if, indeed, you weren't going to use it for the enforcement of the act?

Mr. Vera. Well, I can answer it. I think it is sort of an assumption that everyone makes here, is that we do not want to have the Federal Government financing in any way any program or activity if these is discrimination that has been found, and why should taxpayers' money go to an institution if that institution is denying benefits to a certain individual on the basis of race or national origin. And that seems to me the underlying moral assumption that we've made here.

Let me just say that the hypothetical you raised is not a hypothetical. As you know, OCR has found the State of Texas in noncompliance with title VI, and still Federal funds do go to Texas.

Mr. Armey. Well, let's examine for a moment the plight of the people who fill out these forms. A department chairman in an academic department in a university, when he fills out that form, is going to testify that there is no discrimination in my department, right?

Now, he is dealing with 12, or 13, or 14, or 15 individuals who enjoy the privilege of academic freedom, and will discriminate in any manner that they want in the classroom under the protection of this concept of academic freedom and, indeed, do.

And if you spend any time at all around a university, you will find that the last right to be considered is always the student's right. If you look at any provisions, there are no provisions to protect students' rights.

Now, how in the world can any department chairman testify to the integrity of his own department, let alone the department across the hall or across the State?

It really seems to me you are asking the man to, in effect, testify to something that is totally outside his control.

Mr. Vera. I'm not sure that I follow your example, but in terms of this bill, I think that it's sort of interesting that you mentioned students' rights because one of the reasons I'm in favor of this bill is precisely because of student rights.

I don't think you can pinpoint any Federal money that goes to admissions in terms of deciding who gets into a school or not, yet under the *Grove City* decision, admissions decisions could not be covered because Federal money does not flow to that program or activity—that is, the decision as to who gets in or not.

Mr. **Armey**. Well, I want to get to my point because in another section here we have, with respect to a department or agency of a State or local government. When we're talking about enforcement of this legislation with Government agencies, we get very program specific.

Now, it suggests to me that the drafters of this bill have a greater confidence in the integrity and the good intentions of policemen than they do in college professors, which may or may not be a justified assumption. Would you accept that contention?

Ms. **Mayerson**. Well, first, I want to clarify on the last question, I don't think that anyone purports to say that academic freedom includes the right to discriminate on the basis of race, sex, or handicap or age.

Mr. **Armey**. Well, I would like for you to sometime see how comfortable it is for yourself to be in the position of vouching for your faculty.

Ms. **Mayerson**. The fact is that a system—it is not unreasonable to require a system to be accountable and to have as its policy nondiscrimination.

Next, I think that the coverage of universities and systems is consistent with the coverage of departments and agencies of State or local government.

Mr. **Armey**. Is that not a double standard? It seems to me you are clearly setting one standard for police departments, fire departments, garbage collectors and another standard for college professors and for businessmen.

Should a division of General Motors in Arlington, TX be liable for the elimination or loss of Federal contracts because a division in Michigan performed some act of discrimination, or failed to give testimony before an accusation that they don't do such a thing?

Ms. **Kohn**. If GM is a Federal contractor, and we know that it is, the Federal contract fair employment requirements apply to the entire GM and, if they are found to discriminate and will not conciliate that discrimination and eliminate the discrimination, then GM loses its right to be a Federal contractor.

Mr. **Armey**. But why not use the same logic with respect to a fire department enjoying revenue sharing as opposed to a police department? And if you look at all at the allegations regarding the treatment of these two departments, the firemen will quickly tell you that the police departments are treated with favoritism.

You've got here a clear double standard that presumes public employees outside of universities have a higher degree of integrity than either university employees or private employees, or division heads.

Ms. **Kohn**. I don't believe I understand what you mean when you say there is a difference between the fire department and the police department. If the fire department receives Federal financial assistance, it would——

Mr. **Armey**. My time is fleeting. So, you are telling me that as a long-time advocate of women's rights, you do not understand what is meant by the concept of a double standard? Is that what you are telling me? You don't understand what a double standard is?

Ms. **Kohn**. No, I'm trying to understand how you are applying it to State and local governments.

Mr. **Armey**. I'm saying that if you are in a State or local government, the law is program-specific. When you are either in a university system or in private employment, it is far broader in its specificity.

Ms. **Kohn**. I don't believe that's so. I think it is not program-specific——

Mr. **Armey**. Well, it's right here. You told me you read the law——

Ms. **Kohn** [continuing]. It's by department.

Mr. **Armey** [continuing]. The bill, it's right in here, is it not? It says right here, "A department or agency of a State or local government." Here it says "a system of higher education, a corporation, partnership or other private organization."

I don't think there's been any question in anybody's minds here that when you are talking about universities or private corporations, you are talking system or corporatewide, and when you are talking about State and local governments, you are talking about departments. That is a double standard.

Ms. **Kohn**. We are restoring the law to what it was before *Grove City*. That was the way it was enforced before *Grove City*, with regard to State and local governments.

Mr. **Armey**. So you are here, then, endorsing the restoration of a double standard.

Ms. **Mayerson**. I think there is an important distinction to be made, which is that agencies of States and departments of States also have subunits, suboffices, and those are all covered by this bill.

They are covered. The departments of the States or the agencies of the States or local government is covered in its entirety, as is a university that has different programs and departments within that university covered in its entirety, as is a corporation that has different subunits covered in its entirety, as is a local educational agency that has subunits covered in its entirety.

Mr. **Armey**. So, you understand then that as always, the private American citizen who cherishes his freedom can clearly see that once again the Federal Government is perfectly willing to set one standard for itself and another standard for private citizens.

Mr. **Vera**. No.

Mr. **Armey**. You don't.

Mr. **Vera**. There's a pragmatic consideration here, and that is that a university, in many respects, is an integral whole, and that is that if you begin to separate the units of a university, civil rights advocates, in terms of myself, we are going to be challenged in the courts as to whether we have any jurisdiction to get to that university or not.

Mr. **Armey**. Well, I may suggest that there is a considerable greater diversity between the sociology department and the computer science department in a university than there is between the police and fire departments of the community in which that university is found.

I think the pragmatic reality that you refer to is what we often also call a political concession.

Mr. **Vera**. I don't think so. Look at Austin Community College. I would say there would be very little difference in the amount of money that goes to the sociology department at Austin Community College versus the education department.

The money flows from one institution—I mean, from one department to another within a university. You don't have the same breakdown of money that you have in a department, within a State in which allocations or blocks of money are set off for the Department of Transportation, say, in the State of California, or the Department of Health, Education, and Welfare.

I think there are pragmatic decisions here. There is no double standard.

Mr. **Armey**. Well, I have a pragmatic need to be equally protected by the fire department and the police department, just as a student would have a pragmatic need to take both computer science and sociology courses. And there is——

Ms. **Mayerson**. This bill is not establishing boundaries, this bill is not establishing artificial structures. It recognizes structures that currently exist, and there are State departments and there are local departments, all of which have subunits with different functions, and there are universities, all of which have subunits, and there are local school districts, and they all are analogous situations.

Mr. **Edwards**. The time of the gentleman has expired.

Mr. **Armey**. As is the case of corporations and local governments. Thank you. Thank you, Mr. Chairman.

Mr. **Edwards**. The gentleman from Illinois, Mr. Hayes.

Mr. **Hayes**. Thank you, Mr. Chairman. I just want to make the comment that I've appreciated and want to thank each of the panelists for the concise and precise manner in which you have condensed your testimony in specific terms, and have answered some of the questions that have come up prior to your appearance.

There's one area which I want to focus a question to the entire panel, or one member of the panel, unless you disagree—I'm not looking for three responses. If you agree, you can just indicate that, in the interest of time. It's in the area of enforcement.

I've heard extensive questioning throughout the hearings, regarding the new burdens under H.R. 700, that will be imposed upon employers. There would be probably an increase in the data collection conducted in connection with the enforcement of the civil rights laws, as a result of H.R. 700.

Do you see that as a problem?

Ms. **Kohn**. I don't see that as a problem. I don't believe that H.R. 700 will increase data collection obligations or activities, nor do I think that problems of Federal agencies interrelating to one another are changed in any way by this legislation.

We already have in place Executive Order 12250, which directs the Justice Department to coordinate and eliminate overlap in the enforcement of the Federal funding civil rights laws, title VI, 504 and title IX and, if anything, the continued existence of the *Grove City College* decision and its implementation is creating a host of other problems that need to be corrected. So, in some respects, enforcement problems will be clarified and eliminated by virtue of this legislation.

Mr. **Hayes**. No further questions.

Mr. **Edwards**. I have one quick question, then we have to go to another vote, and we will wind it up.

A number of the witnesses, hostile witnesses, have stated, Ms. Kohn, that H.R. 700 eliminates the education limitation already contained in title IX. Do you believe that to be a correct statement?

Ms. **Kohn**. No, I do not. I think the education limit in title IX is retained. There is no intent to expand title IX to cover discrimination with regard to health services, or in transportation, though we would very much like to have a comprehensive protection that that change is not being sought in this legislation at all.

Mr. **Edwards**. Thank you. You have all been very helpful witnesses, and we appreciate it very much.

The committee is adjourned.

[Whereupon, at 12:43 p.m., the joint hearing of the committee and subcommittee was adjourned.]

THE CIVIL RIGHTS RESTORATION ACT OF 1985

TUESDAY, APRIL 2, 1985

House of Representatives, Committee on Education
and Labor, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary,
Washington, DC.

The joint committee met, pursuant to call, at 2:07 p.m., in room 2175, Rayburn House Office Building, Hon. Augustus F. Hawkins (chairman of the full committee) presiding.

Members present from the full Committee on Education and Labor: Representatives Hawkins, Martinez, Owens, Hayes, Bruce, Penny, Petri, Gunderson, Bartlett, McKernan, Armey and Fawell.

Members present from the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary: Representatives Edwards, Kastenmeier, Conyers, Sensenbrenner and DeWine.

Staff present from the full Committee on Education and Labor: Edmund Cooke, majority counsel; and Karen Vagley, majority counsel.

Staff present from the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary: Ivy L. Davis, assistant counsel; and Phil Kiko, associate counsel.

The **Chairman**. The Committee on Education and Labor and the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary meet today to conclude our hearings on H.R. 700, the Civil Rights Restoration Act of 1985.

Because of the number of witnesses and time constraints, the Chair will not read the rest of the statement but, without objection, will insert it in the record at this point.

[Opening statement of Hon. Augustus F. Hawkins, follows:]

Opening Statement of Hon. Augustus F. Hawkins, a Representative in Congress From the State of California and Chairman, Committee on Education and Labor

The Committee on Education and Labor, and the subcommittee on Civil and Constitutional Rights of the House Judiciary Committee meet today, to conclude our hearings on H.R. 700, the Civil Rights Restoration Act of 1985.

I wish to take a few minutes today to again clarify the meaning and analysis intended by the sponsors of H.R. 700. H.R. 700 defines the words "program and activity" to provide a clear understanding of which "programs and activity " of that ascertained recipient will then be held to a duty of non-discrimination. The bill does not alter the prior definition of recipient. More importantly it does not alter the necessity of first making a determination of who is a recipient under existing definitions. If we had intended to include the concept of recipient in our definition of the phrase "program or activity", the words, defined in the bill would have had to have been "program and activity receiving". In other words, the sponsors of the bill intend that the current "recipient" definition (or definitions) contained in the several operative regulations remain in place and that determination of who is a recipient is an analytical step which precedes and is not modified by the subsequent determination of scope of a program or activity. If the entity in question is determined not to be a recipient, then the question of the scope of its "program and activity", as set forth in H.R. 700, having a duty of non-discrimination is never asked. Just as the Court in *Grove City* first found who was a recipient, and then asked which "program and activity" of that recipient has a duty of non-discrimination, H.R. 700 follows the same form of analysis, i.e., who is the recipient under the existing definitions, and then what is the scope of the "program and activity" of that recipient having a duty not to discriminate. Thus, the differences between H.R. 700 and *Grove City* is not the first step of the analysis but the second. While the court in *Grove City,* having once found the recipient, narrowed the scope of the recipient's program and activity having a duty of non-discrimination, H.R. 700 statutorily restores the broad meaning and scope of "program and activity" which is to be applied only after a recipient is found.

Consequently, to argue that the recipient definition has been altered is to overlook the clear statutory structure and wording of the bill as well as the underlying statutes. I believe we should examine the reason some wish to argue that the recipient definition has been changed and ask whether such argument is made to clarify the issue or to confuse it. Maybe it is those same interests whose wish that the definition of recipient actually accepted in the *Grove City* case would also be abandoned thus narrowing further the reach of our civil rights laws. While the sponsors of this measure seek only "restoration" could it be that the opponents seek only further retrogression beyond which even the court in *Grover City* was unwilling to go.

The CHAIRMAN. Are there other members, particularly Mr. Edwards or Mr. Sensenbrenner, who wish to make a statement at this time? If not, the committee will proceed.

We will call on the witnesses, Mr. Lowell Johnston, NAACP Legal Defense Fund; Mr. Clarence Pendleton, Chairman of the U.S. Commission on Civil Rights; Ms. Mary Frances Berry, Commissioner of the U.S. Commission on Civil Rights; Mr. Gordon Jones, vice president for Government and Academic Relations of the Heritage Foundation; Mr. Mark A. de Bernardo, manager of labor law, the Chamber of Commerce of the United States; and Mr. William Taylor, on behalf of the Center for National Policy Review and the Leadership Conference on Civil Rights.

The witnesses have already been seated at the witness table. We welcome all of you and we look forward to the afternoon session of the joint hearings.

All of the statements will be inserted in the record at this point. We will then call on each of the witnesses individually and then proceed to question them aftewards in the order in which their names have been called, beginning with Mr. Lowell Johnston of the NAACP Legal Defense Fund.

Mr. Johnston.

Mr. JOHNSTON. Excuse me, Mr. Chairman. I had understood that Mr. Taylor would begin today, and I am prepared to follow his testimony, if we could follow in that order.

The CHAIRMAN. Are you testifying yourself?

Mr. JOHNSTON. I am testifying on behalf of the NAACP Legal Defense Fund, but as I understood it, Mr. Taylor was to begin today to answer some additional questions the Members had.

The CHAIRMAN. Well, Mr. Taylor is on the last panel. We will then call on Mr. Pendleton. You prefer to precede Mr. Taylor, is that it, or succeed?

Mr. JOHNSTON. Succeed, Mr. Chairman.

The CHAIRMAN. All right. If there are no objections, we will proceed that way. We will have Mr. Clarence Pendleton, Chairman of the U.S. Commission on Civil Rights.

Mr. Pendleton, welcome to the committee.

STATEMENT OF CLARENCE PENDLETON, CHAIRMAN, AND LINDA CHAVEZ, U.S. COMMISSION ON CIVIL RIGHTS

Mr. PENDLETON. Thank you, Mr. Chairman. I am delighted to be here along with Ms. Linda Chavez, our staff director, to provide testimony on the Civil Rights Restoration Act of 1985. Ms. Chavez will provide you with a detailed analysis of H.R. 700 in her testimony.

Before she does, however, I would like to summarize for you the Commission's view of the *Grove City* matter, as more precisely defined in its recent statement of March 5, 1985, which I ask to be included in the record.

Last year the Commission issued a statement on H.R. 5490, the Civil Rights Act of 1984. In that statement the Commission expressed support for legislation to overturn the narrowing effects of the *Grove City* decision.

The Commission believed that such legislation should provide broad coverage under title IX, as well as under title VI, section 504, and the Age Discrimination Act.

The Commission closely followed the Civil Rights Act of 1984 in the 98th Congress and submitted a written statement to the House committees reviewing the bill. We also testified on two occasions in committee hearings in the Senate. The Commission staff also responded to requests by Members of the House and Senate for analyses of the Civil Rights Act of 1984.

On March 5, 1985 the Commission adopted a more precise stand on legislation to overturn *Grove City*. I would like to submit that statement for the record and to summarize it for you.

The Commission's adoption of the *Grove City* statement was based upon a review of documents prepared by the previous Commission and sent to us by the staff director, a balanced panel discussion before us in January 1985 in San Diego, and various staff memoranda both last year and this year.

As a result of our review, we arrived at six points or principles against which we believe any *Grove City* legislation should be measured. The statement was adopted by a 5-to-2 vote, with Commissioners Berry and Guess voting no, and Commissioner Ramirez being absent.

At the outset let me note that in fashioning Federal civil rights policy the value of diversity in a free society and the inherent value of preserving a healthy and vigorous private sector must be taken into consideration.

Moreover, consideration of civil rights policy with respect to the four crosscutting statutes must take place mindful of the existence of other Federal and State antidiscrimination laws, including title II of the 1964 Civil Rights Act dealing with public accommodations, title VII of the same act concerning employment, title VIII of the Fair Housing Act of 1968, IRS denial of tax exemptions to racially discriminatory schools, and other Federal civil rights statutes and policies, along with the 14th amendment and State and local laws.

Many of these laws, including the four crosscutting civil rights statutes enacted between 1964 and 1975, are supported by a plethora of regulations and by enforcement bureaucracies.

The Commission adopted six principles in its statement on *Grove City*.

First, the Commission believes that some are seizing upon the *Grove City* decision to seek a vast expansion of Federal authority in the guise of merely restoring such authority.

The Civil Rights Restoration Act of 1985, which is the subject of this hearing, may more aptly be called the Civil Rights Expansion Act of 1985.

H.R. 700 does not merely restore the scope of coverage some Federal agencies exercised before *Grove City,* as its sponsors suggest. Indeed, this overreaching proposal even exceeds some coverage under the Civil Rights Act of 1984 and the Kennedy-Packwood substitute offered therefor on September 20, 1984 in the last Congress.

Second, the Commission believes that the scope of coverage of the four crosscutting civil rights statutes, whether over educational institutions or over any other entity or person, should be limited to the scope of coverage listed in the dozens of Federal agency regulations which currently implement these statutes, such as those which receive Federal aid directly from the Federal Government or through another recipient.

The Commission notes with favor the observation made by Justice Lewis Powell, joined by Chief Justice Burger and Justice Sandra Day O'Connor, in his concurring opinion on *Grove City*:

> Apart from * * * indirect assistance, *Grove City* has followed an unbending policy of refusing all forms of government assistance, whether federal, state or local. It was and is the policy of this small college to remain wholly independent of government assistance, recognizing * * * that with the acceptance of such assistance one surrenders a certain measure of the freedom that Americans always have cherished.

We believe that a college, for example, which foregoes Federal aid to avoid Federal edicts should not be federalized by enrolling students who themselves received federal student aid. Nor should a grocery store or supermarket be subject to coverage under the crosscutting civil rights statutes merely because the stores participate in the Food Stamp Program.

Third, the Commission believes that a public entity, which is already supported by State and local taxes and which receives direct Federal aid, should be covered by the four crosscutting statutes as broadly as Federal agencies had covered such an entity prior to *Grove City*.

A public entity is already subject to the 14th amendment's equal protection clause. This provides a strong measure of protection against discrimination on the basis of race and nearly as much protection against sex discrimination, even in the absence of its receipt of Federal aid.

When such a public entity seeks to obtain Federal aid, we believe it is appropriate that it become subject to broad coverage under the crosscutting statutes.

The statutory bans on discrimination on the basis of age and handicap would then broadly apply, together with the race and sex discrimination bans under the Constitution. The title VI ban on race discrimination and the title IX ban on sex discrimination in education would add an administrative enforcement mechanism to judicial enforcement under the Equal Protection Clause.

Fourth, the Commission believes that *Grove City* legislation should differentiate between a public and a private entity with respect to the scope of coverage issue.

In our view, a private institution which seeks and receives direct Federal aid should be covered only in the program or activity that actually receives or uses such assistance. We hold this view for the same reason as we object to any coverage of so-called indirect Federal aid, the importance of preserving an independent and vigorous private sector.

Fifth, the Commission believes that Congress should provide that termination of federal financial assistance be limited to the particular program or activity, or part thereof, or other recipient as to whom a finding of noncompliance has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been found.

This is the language in presently existing law, section 602 of title VI and section 902 of title IX. Its meaning was not changed by the *Grove City* decision.

Of course, the Federal funding agency should be free to refer matters to the Department of Justice for litigation against public recipients of Federal assistance even in parts of the recipient which are not federally assisted.

Finally, the Commission takes the position in its *Grove City* statement that Congress should provide an effective religious exemption for title IX.

Such an amendment should allow religious institutions the maximum freedom to operate in a manner consistent with their religious tenets, so long as they comply with the principles against racial discrimination contained in *Brown* v. *Board of Education.*

Currently title IX contains an exemption which is limited only to institutions which are controlled by religious organizations. This is insufficient to account for the diversity of religious educational institutions in this country.

These are the principles which the Commission believes should be embodied in a legislative response to the *Grove City* decision.

The Commission staff, in addition, has analyzed H.R. 700 and S. 272, the Dole bill, and has provided these analyses to Members of Congress at their request.

I understand that a Commission staff analysis recently circulated to some House majority staff also, when they requested copies of that analysis from minority staff.

Linda Chavez will now provide you with her analysis of H.R. 700, but let me close by reiterating my own belief that while many of the bill's proponents claim that the bill would only return present civil rights coverage to pre-Grove City status, in fact it would go much further.

[Prepared statement of Clarence M. Pendleton, Jr., follows:]

PREPARED STATEMENT OF CLARENCE M. PENDLETON, JR., CHAIRMAN OF THE U.S. COMMISSION ON CIVIL RIGHTS

Mr. Chairman, I am delighted to be here along with Ms. Linda Chavez, Staff Director of the United States Commission on Civil Rights, to provide testimony on the

Civil Rights Restoration Act of 1985. Ms. Chavez will provide you with a detailed analysis of H.R. 700 in her testimony. Before she does, however, I would like to summarize for you the Commission's view of the *Grove City* matter, as more precisely defined in its recent statement of March 5, 1985.

Last year, the Commission issued a statement on H.R. 5490, the Civil Rights Act of 1984. In that statement, the Commission expressed support for legislation to overturn the narrowing effects of the *Grove City* decision. The Commission believed that such legislation should provide broad coverage under Title IX, as well as under Title VI, Section 504, and the Age Discrimination Act. The Commission closely followed the Civil Rights Act of 1984 in the 98th Congress, and submitted a written statement to the House Committees reviewing the bill. We also testified on two occasions in Committee hearings in the Senate. The Commission staff also responded to requests by members of the House and Senate for analyses of the Civil Rights Act of 1984.

On March 5, 1985, the Commission adopted a more precise stand on legislation to overturn *Grove City*. I would like to submit that statement for the record, and to summarize it for you. The Commission's adoption of the *Grove City* statement was based upon a review of documents prepared by the previous Commission and sent to us by the Staff Director, a balanced panel discussion before us in January 1985, and various staff memoranda both last year and this year. As a result of our review, we arrived at six points or principles against which we believe any *Grove City* legislation should be measured. The statement was adopted by a 5-2 vote, with Commissioners Berry and Guess voting no, and Commissioner Ramirez being absent.

At the outset, let me note that in fashioning Federal civil rights policy, the value of diversity in a free society and the inherent value of preserving a healthy and vigorous private sector must be taken into consideration. Moreover, consideration of civil rights policy with respect to the four cross-cutting statutes must take place mindful of the existence of the other Federal and State antidiscrimination laws, including Title II of the 1964 Civil Rights Act dealing with public accommodations; Title VII of the same act, concerning employment; Title VIII, the Fair Housing Act of 1968; IRS denial of tax exemptions to racially discriminatory schools; and other Federal civil rights statutes and policies along with the Fourteenth Amendment and State and local laws. Many of these laws, including the four cross-cutting civil rights statutes enacted between 1964 and 1975, are supported by a plethora of regulations and by enforcement bureaucracies.

The Commission adopted six principles in its statement on *Grove City*. First, the Commission believes that "some are seizing upon the *Grove City* decision to seek a vast expansion of Federal authority in the guise of merely 'restoring' such authority." The Civil Rights Restoration Act of 1985 which is the subject of this hearing may more aptly be called the Civil Rights Expansion Act of 1985. H.R. 700 does not merely "restore" the scope of coverage some Federal agencies exercised before *Grove City*, as its sponsors suggest. Indeed, this over-reaching proposal even exceeds coverage under the Civil Rights Act of 1984 and the Kennedy-Packwood substitute offered therefor on September 20, 1984, in the last Congress.

Second, the Commission believes that the scope of coverage of the four cross-cutting civil rights statutes, whether over educational institutions or over any other entity or person, should be limited to the scope of coverage listed in the dozens of Federal agency regulations which currently implement these statutes: *viz.*, to those which receive Federal aid *directly* from the Federal government or *through another recipient*. The Commission notes with favor the observation made by Justice Lewis Powell, joined by Chief Justice Warren Burger and Justice Sandra Day O'Connor, in his concurring opinion in *Grove City:*

> Apart from * * * indirect assistance, Grove City has followed an unbending policy of refusing all forms of government assistance, whether federal, state or local. It was and is the policy of this small college to remain wholly independent of government assistance, recognizing * * * that with the acceptance of such assistance one surrenders a certain measure of the freedom that Americans always have cherished.[1]

We believe that a college, for example, which "foregoes Federal aid to avoid Federal edicts should not be federalized by enrolling students who have themselves received Federal student aid." Nor should a grocery store or supermarket be subject to coverage under the cross-cutting civil rights statutes merely because the stores participate in the Food Stamp Program.

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[1] *Grove City College* v. *Bell*, 104 S. Ct. 1211, 1223 (1984).

Third, the Commission believes that a public entity, which is already supported by State and local taxes, and which receives direct Federal aid, should be covered by the four cross-cutting statutes as broadly as Federal agencies had covered such an entity prior to *Grove City*. A public entity is already subject to the fourteenth Amendment's Equal Protection Clause. This provides a strong measure of protection against discrimination on the basis of race and nearly as much protection against sex discrimination, even in the absence of its receipt of Federal aid. When such a public entity seeks and obtains Federal aid, we believe it is appropriate that it become subject to broad coverage under the cross-cutting statutes. The statutory bans on discrimination on the basis of age and handicap would then broadly apply, together with the race and sex discrimination bans under the Constitution. The Title VI ban on race discrimination and the Title IX ban on sex discrimination in education would add an administrative enforcement mechanism to judicial enforcement under the Equal Protection Clause.

Fourth, the Commission believes that *Grove City* legislation should differentiate between a public and a private entity with respect to the scope-of-coverage issue. In our view, a private institution which seeks and receives direct Federal aid should be covered only in the program or activity that actually receives and uses such assistance. We hold this view for the same reasons we object to any coverage of so-called indirect Federal aid, viz., the importance of preserving an independent and vigorous private sector.

Fifth, the Commission believes that Congress should provide that termination of Federal financial assistance be "limited to the particular political entity, or part thereof, or other recipient as to whom [a finding of noncompliance] has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found. This is the language in presently existing law (e.g., Section 602 of Title VI and Section 902 of Title IX). Its meaning was not changed by the *Grove City* decision.

Of course, the Federal funding agency should be free to refer matters to the Department of Justice for litigation against public recipients of Federal assistance even in parts of the recipient which are not Federally assisted.

Finally, the Commission takes the position in its *Grove City* statement that Congress should provide an effective religious exemption in Title IX. Such an amendment should allow religious institutions the maximum freedom to operate in a manner consistent with their religious tenets, so long as they comply with the principles against racial discrimination contained in *Brown* v. *Board of Education*. Currently Title IX contains an exemption which is limited only to institutions which are "controlled by religious organizations." This is insufficient to account for the diversity of religious educational institutions in this country.

These are the principles which the Commission believes should be embodied in a legislative response to the *Grove City* decision. The Commission staff, in addition, has analyzed H.R. 700 and S. 272, the Dole bill, and has provided these analyses to members of Congress at their request. I understand that a Commission staff analysis recently circulated to some House majority staff also, when they requested copies of that analysis from minority staff.

Linda Chavez will now provide you with her analysis of H.R. 700. But let me close by reiterating my own belief that while many of the bill's proponents claim that the bill would only return present civil rights coverage to pre-*Grove City* status, in fact it would go much further.

Francis S. Guess issues the following dissent to the Statement on Grove City adopted by the Commission on March 5, 1985.

It is with regret that I dissent from the Commission statement on Grove City. A year ago, I was pleased to join the majority of this body in pleading with the Congress to take the necessary legislative steps to restore coverage of the various civil rights laws affected by the Supreme Court's decision in Grove City v. Bell. Since that time, that same majority of the Commission have felt compelled to abdicate their responsibility to objectively and impartially appraise the civil rights laws of the United States.

I cannot do so.

As a matter of public policy, the question arising from the Grove City decision is the extent to which the use of federal funds by private and public entities subject them to certain obligations under our civil rights laws.

For a year now the Congress, the lower courts, the Reagan Administration, and this Commission have sought an appropriate response to the Supreme Court's decision on the Grove City College case.

Throughout these deliberations, those with clear vision have seen the fundamental need to make fairly simple and straight forward adjustments to the textual difficulties found in Title IX of the Education Amendments of 1972 (along with similar language found in Title VI of the 1964 Civil Rights, Act, Sec. 504 of the 1973 Rehabilitation Act, and the Age Discrimination Act of 1975) which prompted the court's decision. Nothing more. Nothing less.

In its current statement, the majority observes it is now "time for candor." On this point, I agree.

The majority notes "that some are seizing upon the Grove City decision as an opportunity to seek a vast expansion of federal authority." This may well be true.

However, at the same time it is a matter of fact that some are embracing the Grove City decision as an opportunity to seek a constriction of our civil rights laws. As evidence, I merely offer the Commission's current statement on Grove City.

A year ago, the Commission stated that "legislation overturning the narrowing affects of the Grove City opinion" should be enacted by Congress. Now, the Commission suggests that Congress enact legislation providing for even narrower coverage than that set out in the Supreme Court's opinion. On this most crucial point, the Commission has abandoned a concern for assuring the proper use of tax dollars. Out of one side of their mouths they say the Commission is "dedicated to the extirpation of invidious discrimination in American life." Yet, out of the other side they whisper that regardless of the amount of federal assistance, directly or indirectly, that a private institution receives, the strings, if any, should be loosely tied to our antidiscrimination laws.

In my opinion, Congress should provide every reasonable tool to assure that taxpayers money is not used to construct discriminatory barriers in our society. The Commission's recommendation is totally unacceptable. I urge the Congress, and the President, and the American people to reject this unfortunate advice.

Reduced to its least common denominator, the appropriate guidance this Commission should have rendered is that the application of the four civil rights statutes in question should be restored to the generally accepted interpretation prior to the Supreme Court's ruling in the Grove City College v. Bell case. Once again—nothing more, nothing less.

Mary Frances Berry and Blandina Cardenas Ramirez dissented from the Commission's March 28, 1984 statement on this same topic and remain convinced of their views expressed at that time.

They also join in this statement.

TRUTH IN LEGISLATION AND THE CIVIL RIGHTS RESTORATION ACT OF 1985

STATEMENT OF COMMISSIONERS MORRIS B. ABRAM AND JOHN H. BUNZEL

The panoply of federal civil rights legislation and the plethora of regulation grafted on to these laws and the Constitution—plus state and local additions—were so comprehensive in coverage and penetration that since 1974 not even the most activist elements of the civil rights movement have proposed new legislation, except perhaps in the housing area.

Then, in February 1984, the United States Supreme Court held that Grove City, a private college against which no claim of discrimination had been levelled and which deliberately refused all federal aid (so that it could remain free of government red tape and direction) was nevertheless obliged by the Supreme Court to submit to federal oversight and reports simply because some students applied for and received federal aid. The Court, however, said that only the federal aid program was subject to federal control.

This decision has become the occasion and opportunity for a frenzied campaign by a civil rights industry to extend the reach of federal oversight, red tape and control over a vast area of American private life, institutional and business.

The operation of the civil rights activists is concealed in ambiguous language and false but dire prediction of the fate of human equality if their proposals are not adopted. Their principal piece of legislation aimed at tieing private life to their agenda is pretentiously labeled "The Civil Rights Restoration Act of 1985", as if to suggest that important and progressive strides in civil rights have been repealed.

Truth in legislation would have uncovered the mislabeled Civil Rights Restoration Act as a Trojan Horse, out of which would spring thousands of rulemakers, inspectors and supervisors to diminish individual freedom and private life.

We see America as a quilt of many squares that fit together into a happy and productive whole. First, there is a public sector, run by government, subject to its regulations. Next, there is a private sector that eschews public funds but accommodates the members of the public who choose to bring their benefits such as federal student loans or food stamps. Such private institutions should not be transformed into public ones in light of their deliberate choice to forego direct federal aid.

There is a private sector, however, which does accept federal grants for certain functions. These should be covered by federal policy in the operations which receive federal financing by their choice.

Throughout our constitutional history there has always been a tension between the public and the private sectors, just as there has been tension between the federal government and state and local governments. We believe it is a tension that well serves the competing values of our democracy that includes not only equality but freedom and individual choice. The fostering and protection of these democratic values is an irreducible minimum for a free society and of itself an important civil right to which we remain committed.

CONCURRING STATEMENT OF COMMISSIONER ROBERT A. DESTRO

It is with some regret that I add my concurring opinion to the Commission's March 5, 1985 "Statement on Grove City", for I would not normally do so unless I considered the issues raised in the statement to be of such importance as to merit special emphasis and clarification.

There has been much debate over the necessity for policy changes since the Supreme Court's decision in *Grove City College* v. *Bell.* Much of that debate has focused on the charge that the Supreme Court's decision has been (and is being) used as an excuse to cut back on otherwise permissible civil rights enforcement efforts. Whether such charges are, in fact, true depends, of course, on how one interprets the state of the law as it existed "pre-*Grove City*". Even though there has been extensive discussion of the case by commentators, advocates of policy positions and government officials, there is no agreement whatsoever regarding the meaning of the claim that the law must be restored to its "pre-*Grove City*" coverage.

I therefore agree with the Commission that "it is time for candor" on this issue. The issues raised by the type of federal civil rights enforcement in education and in the private sector contemplated by the pending bills and the existing regulations are far too important to be caught up in charges and counter-charges concerning the good faith of those who hold conflicting positions concerning the shape, scope and need for some of the proposed policy changes. The Commission has an important role to play in highlighting the factual and conceptual bases of claims of the advocates in this debate, but unfortunately, its statement appears to have been adopted the general tenor of the public debate. It, like much of the commentary in favor of the pending bills I have seen to date, implicitly questions the good faith of those who have a different vision of the proper way to enforce civil rights in parts of the private sector which receive federal funds. Thus, while I agree with the Commission's direction on this issue, I must disagree with some of the language it has chosen to describe some of the participants in the debate. Such language tends to obscure rather than illuminate the main points made by the statement.

In my judgement, there are several essential issues which form the basis for much of the current controversy over the proper response to the Supreme Court's decision. They are as follows:

(1) What should be the proper content and scope of federal civil rights enforcement authority resting on Congress' power under the spending clause of the Constitution?

(a) Direct vs. Indirect Assistance?

The debate over "direct vs. indirect" assistance (i.e. should an institution be covered by the law if it takes no money directly from the federal government) is an important one. The entire debate over the *Grove City* issue assumes that federal money is being used to support discrimination. When the college or university receives no money directly from the federal government. It is arguable that federal funds are not available to support discriminatory activity. The argument that student aid constitutes federal financial assistance to the institution, rather than to the student, blurs the "private"/"public" distinction which is central to the structure of American law. Requiring an entire institution which has elected to utilize federal funds as a means of directly supporting its educational mission to comply with clearly defined civil rights requirements is, and should be, one part of the price extracted from those who receive federal largesse. But to cover an institution simply because its students need federal assistance to further their education goes too far unless Congress turns its full attention to the full implications of the "indirect" aid question.

If any institution which receives "indirect" aid is covered in its entirety are there any private institutions (grocery stores, farms, churches) which can escape federal regulation? In addition, many of the students who receive federal financial assistance in the form of loans or grants make a conscious choice to attend a truly "private" institution. If their enrollment will subject the institution to extensive federal regulation, the result could be to narrow the range of educational choice for such students; for the institution will have no choice but to reject them.

The answer to this argument most commonly heard is that federal funds should not go to institutions which discriminate. But that is precisely the point: the coverage and resulting regulation contemplated by the pending proposals is *not* tied to any proof that the institutions are guilty of any wrongdoing. The assumption, of course, is that, left on their own, the institutions will discriminate because they are either pervasively racist or sexist. This is an assumption I do not share, and I do not believe that it should form the basis of this or any other legislative enactment. The issue deserves debate within this Commission, in Congress, and within the Administration.

(b) What are the available remedies for violations?

Because we are dealing with private institutions, the scope of federal regulatory authority raises important constitutional questions. Do administrative agencies and courts acquire the power to regulate the affairs of private institutions whether or not they have been found in violations of the law? The cases are clear that they do, but the question of whether they should is a matter of great public importance deserving of debate.

More interesting is the nature of the remedy which is allegedly at the heart of this debate: fund termination. It makes a great threat, but as my colleague Commissioner Mary Frances Berry has pointed out: "No institution of higher education has ever had its Federal funds terminated for violating these laws. Never. It has never happened. Never." If no institution has ever had its funds terminated, then what is the debate all about? The answer is fairly simple: administrative regulation and private lawsuits.

To speak in terms of fund termination for entire systems of education borders on the absurd. I suspect that most administrators and few members of Congress have the political will to cut off an entire university system because of discrimination in one program or activity. The same argument applies to "pinpoint" termination, which is preferable, but probably just as unlikely. In reality, this debate has always been about the extent of permissible regulation, not over fund termination, and it is time to cast the debate in those terms. One need only consider the case of the institution which receives no direct assistance and enrolls students with student loans to illustrate the problem. Is the government to cut-off the loans to the students, thus assuring that they get no education, or will it seek to force the offending institution to comply with the regulations? The answer is that they will seek to force compliance with the regulations; for "pinpointing" the termination of funding to the program in which the aid is used (student loans) would harm the very students the law is supposed to protect. This is why I contend that the entire debate over the "Grove City" bills is about federal regulations and the power of courts and administrators to enforce them. We are not debating the "restoration" of civil rights, but the restoration of amdinistrative procedure.

(2) How have the administrative agencies charged with enforcement defined the scope of their own authority and the nature of "discrimination"?

(a) What is the scope of agency authority?

Prior to the *Grove City* case federal administrators defined the scope of their authority very broadly. Nearly every court which considered the issue, including the Supreme court, decided that they had gone to far by equating the term "program or activity" with the term "institution". Most of the Congressional testimony and commentary about the pending bills indicates that their primary purpose is to restore the administrative authority which is alleged to have existed prior to the *Grove city* case. the record, however, supports the Supreme Court's view.

Since the issue is administrative authority, it is important for Congress to consider just what authority it wants administrative agencies and courts to have. No one questions the idea that administratos should have broad authority to enforce the civil rights laws, but Congress needs to define very clearly just what that authority includes. The *Grove City* case itself bears witness to what can happen when administrators take it upon themselves to define their own authority, and the Congress is now facing the task of telling them precisely what it has in mind this time around. It should not shirk that responsibility in favor of "broad" yet vague coverage. The institutions being regulated have civil rights too, and one of the most basic is to know, as clearly as possible, for what and to whom Congress desires them to be responsible. Forcing them to go to court for length litigation to determine what Congress intended is a waste not only of scarce judicial resources, but also scarce private education resources which are better spent for their intended purposes.

(c) How have the agencies defined "discrimination"?

This issue, in my view, is perhaps the most important. Discrimination, like any legal term, needs to be defined. That definition should come from Congress, not from administrators whose views may or may not reflect the legislative consensus required by our Constitution. While most of the more blatant types of discrimination prohibited by the major cross-cutting civil rights statutes ae fairly clear, there is certainly room to maneuver in the more ambiguous areas alleged to be covered by the civil rights laws. My colleague, Vice-Chairman Abram has spoken at length about the travails of the University of Georgia as it attempted to preserve its Regents Examination (which tested basic reading skills) from the attempts by federal regulators to eliminate it in the name of civil rights. The Commission has heard testimony concerning the attempts by the federal government to force Brigham Young University to provide co-ed living facilities for its students nonwithstanding its firmly held religious beliefs that such arrangements should not be provided. The charge was sex discrimination. The examples can be multiplied, but they raise serious questions concerning who makes the substantive law: Congress or the enforcement agencies? Congress and this Commission have an obligation to inform themselves concerning the way in which discrimination is being defined under each of the statutes to be affected by these legislative proposals. The reason is fairly simple: if coverage *is* extended to institutions which have not been covered in the past, they will need to comply with all the rules and regulations promulgated by various federal agencies. Both Congress and the Commission should take pains to assure that these substantive provisions are highlighted and explored.

(d) What impact will the imposition of these regulations have on first amendment rights, especially religious and academic freedom?

My concern in this area arises because it is clear that there is resistance to an expanded religious exemption in Title IX. While the reasons for the opposition have never been stated explicitly, the testimony of both Arthur Flemming and Judith Lichtman before the Senate Judiciary Committee last summer seem to indicate that both suspect that religious institutions must be controlled to assure that they do not discriminate. Ms. Lichtman testified that an amendment to protect small religious institutions from pervasive government regulations "was just the kind of amendment that makes someone like [her] to worry a lot. . . . It is an amendment that causes lots of problems for women at those institutions. . . . Even 40 or 50 educational institutions in this country should not be permitted legally to say to the girls and young women who are attending . . . that you have no laws to cover you, you have no equal rights amendment . . . and you no longer have Title IX coverage." Likewise, Mr. Flemming, formerly Chairman of this Commission, testified that the religious exemption issue "would open up a whole new rather fundamental issue as far as [he was] concerned". I submit that the "fundamental issue" to which Mr. Flemming was referring was the constitutional rights of the organizations themselves, and the inevitable controversy which would arise were Congress to turn its attention directly to the assumptions concerning government scrutiny and control of religiously motivated actions which are implicit in Ms. Lichtman's testimony. Unfortunately, review of existing Title IX regulations clearly indicates that the Department of Education shares those assumptions.

There is indeed a fundamental issue here. It is the first amendment freedom of religious institutions to follow the dictates and teachings of their religious doctrines as long as they do not practice racial discrimination. The testimony presented to the Commission at its January meeting highlights some of the difficulties certain religiously affiliated institutions of higher education might have in complying with the regulations. My own testimony before the Senate Judiciary Committe indicates that the Office for Civil Rights of the Department of Education has not processed even one request for a religious exemption under the present law, even though there were over 200 pending at the time. The Commission staff is investigating, but the matter deserves a thorough public exposure. It should not be forgotten that there are civil rights on the other side of this controversy as well.

The **CHAIRMAN.** Ms. Chavez, we welcome you before the committee. I have your prepared statement before us. Without objection, the statement, as submitted, will be entered in the record at this point, and we would appreciate if you would summarize from it or give us the highlights of it.

[Prepared statement of Linda Chavez follows:]

PREPARED STATEMENT OF LINDA CHAVEZ, STAFF DIRECTOR OF THE U.S. COMMISSION ON CIVIL RIGHTS

Thank you, Mr. Chairman. As Chairman Pendleton has indicated, staff has undertaken analyses of both H.R. 700 and S. 272. We would like to submit those memoranda for the written record of these proceedings.

My testimony is based largely on these memoranda. I intend to set forth staff views as to where H.R. 700, the subject of this hearing, extends coverage even beyond the broad scope undertaken by some Federal agencies before the Grove City 1/ decision. First, I would like to make some preliminary observations.

I. H.R. 700, the so-called Civil Rights Restoration Act of 1985, is the third bill produced in a 9-month period by largely the same group of Congressional sponsors with the support of the Leadership Conference on Civil Rights. Each bill is significantly different in wording and structure. Each bill was described on its introduction by its sponsors as the appropriate solution to the Grove City decision. By this time, it should be clear, as these three very different proposals indicate, that the Grove City issue is a difficult matter of legislative drafting, even for those who subscribe to a broad view of coverage under the four cross-cutting civil rights statutes amended by H.R. 700.

1/ Grove City College v. Bell, 104 S.Ct. 1211 (1984).

Accordingly, criticism of the bill is not a matter of mere obstructionism or scare tactic. Yet, there are some supporting the bill who, like a broken record, repeatedly and shrilly cry that "Senators Hatch and Helms and the Reagan Administration will employ the same delay and scare tactics they used last year. Indeed, the radical right has already placed the defeat of the measure at the top of their legislative agenda." (Ralph Neas, Executive Director, Leadership Conference on Civil Rights, Feb. 22, 1985). I cannot speak for any of those identified by Mr. Neas. I can tell you, however, that any effort to paint critical commentary on H.R. 700 as a scare tactic or part of some radical right scheming is itself a scare tactic which seeks to stifle honest and open debate. To try to tar those who dare raise questions about a bill labelled "civil rights" and supported by the Leadership Conference on Civil Rights as obstructionist or radical is a disservice both to the Congress and the American people. That tactic almost succeeded last year as this bill barrelled through the House of Representatives, but it ultimately failed. It will not work this year, either, in my opinion.

No group or individual has a monopoly of wisdom or knowledge concerning the issues raised by H.R. 700 - not the U.S. Commission on Civil Rights, not the Leadership Conference on Civil Rights, not the Congressional sponsors of H.R. 700 or its Congressional opponents, and not the Reagan administration. Accordingly, I hope criticism will be accepted as constructive and on its merits.

II. I also hope that this House will deliberate carefully on legislation in this area. The Leadership Conference on Civil Rights stated on February 22, 1985 that the "expected timetable" on H.R. 700 is for House committee mark-ups in mid-April and floor action in late April. If accurate, such a schedule leaves room only for a rubber stamping of the committee reports, and is not conducive to the full consideration this bill requires.

III. Some Federal agencies, including Health, Education, and Welfare, and then the Department of Education, did enforce Title VI, Title IX, Section 504, and the Age Discrimination Act more broadly than the program-specific ruling in Grove City. The General Counsel's February 4, 1985 memorandum notes that, "while responsible people can disagree about Congress's intent when it enacted Title VI and Title IX, . . . a review of the relevant legislative history yields a very strong case that Congress intended coverage under these statutes to be precisely how Congress described it in the statutory language, i.e. that Congress intended the scope of coverage to be program-specific and not institution-wide, unless the Federal aid was institution-wide in nature." I draw your attention to this part of the memorandum because I believe that the chorus of claims that Congress always intended these laws to be broadly enforced is more a post-enactment wish of some legislators than an accurate portrayal of what Congress, in fact, did when it enacted these four laws. A significant number of cases have held that these four laws are program-specific, even before the *Grove City* decision, 2/ although there are a number of cases which interpreted these laws more broadly. 3/

2/ *See*, *e.g.*, Hillsdale College v. Department of Health, Education and Welfare, 696 F.2d 418 (6th Cir. 1982) (Federal scholarship and loan aid to a college subjects only the college's student aid program to Title IX coverage), *vacated and remanded* in light of Grove City College v. Bell, 104 S. Ct. 1673 (1984); Dougherty County School System v. Bell, 694 F.2d 78 (5th Cir. 1982) (reaffirming earlier decision holding that Title IX is program-specific); Rice v. President and Fellows of Harvard College, 663 F.2d 336 (1st Cir. 1981) (assistance provided to the Harvard Law School financial aid program, apparently through a college work-study program, does not constitute assistance to the entire law school educational program; Title IX complaint must allege discrimination in the particular assisted program within the institution), *cert. denied*, 102 S. Ct. 1976 (1982); Brown v. Sibley, 650 F.2d 760, 768 (5th Cir. 1981) ("on the basis of the language of Section 504 and its legislative history, and on the strength of analogies to Title VI and Title IX, we hold that it is not sufficient, for purposes of bringing a discrimination claim under Section 504, simply to show that some aspect of the relevant overall entity or enterprise receives or has received some form of input from the federal fisc. A private plaintiff . . . must show that the program or activity with which he or she was involved, or from which he or she was excluded, itself received or was directly benefited by federal financial assistance.") (footnotes omitted); Simpson v. Reynolds Metals Co., 629 F.2d 1226 (7th Cir. 1980) (Federal aid to a company's work training program subjects only that program, not the entire company, to Section 504 coverage); Bachman v. American Society of Clinical Pathologists, 577 F. Supp. 1257 (D. N.J. 1983) (Federal aid to conduct seminars on alcohol abuse does not bring the society's activity of certifying medical technologists within Section 504 coverage); University of Richmond v. Bell, 543 F. Supp. 321 (E.D. Va. 1982) (University's intercollegiate athletic program not subject to Title IX coverage because it did not receive Federal financial assistance).

3/ *See*, *e.g.*, Haffer v. Temple University, 524 F. Supp. 531 (E.D. Pa. 1981), *aff'd*, 688 F.2d 14 (3d Cir. 1982) (Title IX); Wright v. Columbia University, 520 F. Supp. 789 (E.D. Pa. 1981) (Section 504); Poole v. South Plainfield Board of Education, 490 F. Supp. 948 (D. N.J. 1980) (Section 504); Bob Jones University v. Johnson, 396 F. Supp. 597 (D. S.C. 1974), *aff'd*, 529 F.2d 514 (4th Cir. 1975) (Title VI).

IV. Even agencies which interpreted these laws broadly acknowledged limits on the scope of coverage:

> d. *Assurance from institutions*
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> . . . .
>
> (2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution *unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program*. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. 4/

V. As I mentioned, the *Grove City* decision reduces the extent of enforcement activity some Federal agencies exercised over entities receiving Federal aid. In some instances, this reduction is substantial, as when the Department of Education, rather than regulating all of Grove City College's educational

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4/ 34 C.F.R. 100.4(d)(2) (Department of Education's Title VI regulations) (emphasis supplied). *See also* 45 C.F.R. 80.4(d)(2) (Department of Health and Human Services' Title VI regulation).

activities, may now only regulate its student aid program. By no means, however, should that observation be misunderstood as a suggestion that a program-specific interpretation renders Title IX and the other civil rights statutes a nullity. To the contrary, there are dozens, if not hundreds, of Federal programs dispensing billions of dollars of Federal aid, all of which yield program-specific coverage under these four civil rights statutes.

Let me cite just one example concerning education. All Federal financial assistance from the Department results in program-specific civil rights coverage. For example, in FY 83 $538.7 million in Federal impact aid money went to 2,280 of the approximately 16,000 school districts in the Nation. This is general aid to off-set the burden resulting from the Federal presence in the school district. This kind of Federal aid can generally yield broad coverage of the recipient, even under a program-specific approach when the recipient puts the aid to broad use. A total of several billion dollars of Federal aid for special education and for disadvantaged students also provides civil rights coverage in the overwhelming majority of school districts. Block grant programs, amounting to $500 million in FY 85, also yield such coverage in virtually every school district.

This coverage is in addition to the coverage provided by Federal student aid and other programs. In FY 84, for example, the Pell grant program dispensed $2.8 billion to 2.8 million students. Claims by some groups, such as the Project on Equal Education Rights, NOW Legal Defense and Education Fund; NAACP Legal Defense and Educational Fund, Inc.; The National Women's Law Center; Disability Rights Education and Defense Fund; and the Project on the Status and Education of Women, Association of American Colleges, that only 4% of the $13 billion in Federal aid to higher education is covered by these four laws are, therefore, flatly erroneous.

An analysis of H.R. 700 reveals that it will establish a massive Federal intrusion into both state and local government and the private sector well beyond that which any Federal agency had ever undertaken under these four laws before Grove City. I do not doubt the sincerity of Congressional sponsors who claim that their intent is generally only to restore the scope of coverage that some agencies had undertaken before Grove City. I am simply stating that H.R. 700 clearly goes much further than that intent.

In fact, there are at least 3 instances wherein H.R. 700 even exceeds the scope of last year's Civil Rights Act of 1984 and the Kennedy-Packwood substitute of September 20, 1984:

A. H.R. 700 s definition of "program or activity" covers "all of the operations of . . . a corporation, partnership or other private organization" whenever any part of it is extended Federal aid. Thus, all of a corporation's plants, divisions, and subsidiaries, and perhaps franchisees, are covered if any one plant receives any Federal financial assistance. For example, if an automobile manufacturer receives a Department of Defense contract for research on improving a tank, to be conducted at one plant-site, all of the plants of every car or other division, together with the subsidiaries of the automobile manufacturer, would be covered in their entirety. This far exceeds the scope of pre-Grove City coverage even under a broad agency interpretation. I understand that at the Atlanta hearing of these House Committees, one witness stated that the bill would even cover an independent contractor dealing with a recipient of Federal aid. Prior to Grove City, such a contractor, dealing at arms-length with a recipient of Federal aid, was not subject to coverage. If such coverage is intended by H.R. 700, it would represent one new part of a vast overreaching far beyond pre-Grove City coverage.

Indeed, even the Kennedy-Packwood substitute of September 20, 1984 explicitly provided for less coverage than H.R. 700, limiting coverage when one plant received Federal aid to that plant alone. 5/ Even this coverage of a

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5/ See also Kennedy-Packwood "Dear Colleague" letter, September 19, 1984.

corporation and other private organizations exceeded that which some courts had determined was the scope of these statutes. 6/

B. H.R. 700 also covers all of the operations of a "system of higher education" whenever any part of it is extended Federal aid. For example, if the biology department at college X receives Federal aid, then not only would college X be covered by these four laws in all of its activities, but all of the activities of every other college in that system of higher education would be covered. Under the Civil Rights Act of 1984 (H.R. 5490 in the 98th Congress), such coverage was not automatic. E.g., 130 Cong. Rec. H7022-23 (daily ed. June 26, 1984) (Rep. Fish). 7/ Under H.R. 700, such coverage is always automatic.

6/ See Simpson v. Reynolds Metals Co., 629 F.2d 1226 (7th Cir. 1980); Bachman v. American Society of Clinical Pathologists, 577 F.Supp. 1257 (D.N.J. 1983); Brown v. Sibley, 650 F.2d 760 (5th Cir. 1981) (a state agency run as a business enterprise for the handi- capped). In these pre-Grove City cases, the courts adhered to a program-specific approach in the business and private professional sector.

7/ Congressman Fish stated:

> H.R. 5490 provides that a subunit's receipt of Federal financial assistance will trigger coverage for the parent entity of which it is a part, if the assistance to the subunit of which it is a part "supports" the larger entity as well.
>
> A state university institution has its own unique system, or structure, that is, a board of trustees who are not answerable to the governor of the state.

> In a multicampus situation, where a grant was awarded to only the physics department of one campus for research, and none of the funds were spent for administrative overhead for the whole university system, that campus which was awarded the grant would be the sole recipient. . . .
>
> In the above scenario, the . . . whole university system is not . . . covered. 130 Cong. Rec. H7022-23.

C. H.R. 700 also expands the authority of a Federal agency to terminate Federal funds. Under current law, such authority is pinpointed. This has always been the common understanding of the plain language and legislative history of the termination clauses in the relevant statutes. Supporters of altering the clause's current language seem to believe that Grove City has narrowed its scope. The Grove City decision, however, did not alter the scope of the pinpoint termination clause.

H.R. 700 changes the limitation in this clause from "particular program or part thereof" to "particular assistance which supports" discrimination (emphasis supplied). This language will broaden the scope of the termination clause from that which existed prior to Grove City. This results in part, but not solely, because a limitation in the Kennedy-Packwood September 20, 1984 substitute is not in H.R. 700. That limitation eliminated the "freeing-up" theory from being used to expand coverage of this clause.

Simply returning to the overbroad scope of last year's bill in these 3 areas, however, is hardly sufficient to limit the scope of this bill even to that which had been undertaken by some Federal agencies before *Grove City*. For example, as I mentioned, even plant-wide coverage of a corporation exceeded the scope of coverage which some courts provided before *Grove City*. Moreover, coverage of a system of higher education when one college within it received Federal aid was not only not automatic prior to *Grove City*, it *never* occurred before *Grove City*. 8/ Finally, the use of a "freeing-up" limitation in a termination clause is insufficient to keep its pinpoint nature in light of the other changes in language being proposed by H.R. 700. So I would repeat the caution not to fall into the trap of allowing the sponsors of the bill to make these little cosmetic changes and move from a bill which is five times overbroad to one which is still four times overbroad and then to call that a major concession that should make the people who are concerned about the growth of Federal power encompassed in the bill go away seemingly satisfied.

8/ *See* testimony of Secretary T. H. Bell before the Senate Judiciary Subcommittee on the Constitution, June 5, 1984, at 224.

Let me now turn to other issues raised by H.R. 700.

I. Section 908 of Title IX, as added by H.R. 700, appears to eliminate the "education" limitation of Title IX's coverage. I am sure that this is an inadvertent, but nonetheless real, result.

Title IX is currently limited to "education programs or activities receiving Federal financial assistance." Section 908, as added by H.R. 700, defines "program or activity" to include "_all_ of the operations" of a state or local agency, corporation, private organization, et. al. to which Federal aid is extended (emphasis supplied). While the word "education" remains in Title IX preceeding the program or activity language, H.R. 700's definition of "program or activity" -- referring to "all" operations of a Federally-aided entity -- reads the word "education" out of the statute and renders it devoid of any limiting effect. This of course would represent a major change in pre-_Grove City_ coverage - extending Title IX to other than education activities.

Assuming that this drafting error is corrected, you should also avoid other pitfalls of last year's bill which extended Title IX to areas even beyond that covered by Federal agencies before Grove City. Even when a corporation receives Federal aid for non-educational activities, its educational activities generally were not subjected to Title IX coverage by enforcement agencies. Similarly, for example, a state agency receiving non-educational Federal aid did not have its educational activities subject to Title IX. Generally, the only time educational activities of a non-educational recipient were covered was when those educational activities themselves received Federal aid.

II. A. While Section 1(B) of the definition of "program or activity" might avoid covering all state or local government agencies eligible for funds from a Federal block grant even if a particular agency did not receive such Federal block grant aid, the bill does not clearly prevent such a result. It is not clear whether "each such department or agency (and each other entity) to which the assistance is extended" in subparagraph 1(B) means such department, agency, or other entity to which the assistance is merely "offered" ("extended") even if not accepted, or rather means "actually received." Last year, H.R. 5490 and the September 20, 1984 Kennedy-Packwood substitute meant the former. 9/ Prior to Grove City, Federal agencies

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9/ See 130 Cong. Rec. S12022-24 (daily ed. September 26, 1984). See also "Dear Colleague" letter from Senators Kennedy and Packwood, September 19, 1984 ("[W]ith respect to states and localities, the amendment makes clear that only departments and agencies which actually received Federal financial assistance or are primarily responsible for carrying out the functions for which the assistance was granted, are covered") (emphasis supplied).

did not cover a state agency or other state unit unless it actually received Federal financial assistance. The use of the term "receives" in place of the term "extended" would clarify this point.

II. B. The effect of H.R. 700 on the Revenue Sharing Act is also unclear. The Revenue Sharing Act provides virtually unrestricted Federal money to local governments for use as they see fit. The nondiscrimination provision in the Revenue Sharing statute contains a program-specific ban against discrimination on the basis of race, color, national origin and sex. It also incorporates by reference the Age Discrimination Act and Section 504.

The nondiscrimination provision also contains the following language: the prohibitions against discrimination in this statute "do not apply when the [local] government shows, by clear and convincing evidence, that a payment received under this chapter is not used to pay for any part of the program or activity." This amounts to a rebuttable presumption; in other words, it is presumed that the entire locality is covered under the revenue sharing program unless it can demonstrate that revenue sharing funds were not used in particular activities. Thus, before Grove City, if a locality spent its revenue sharing funds only to build a park, and could show that the payment was not used for anything other than the park, Federal agencies would not subject to coverage any program or activity outside of the recreation department.

Under H.R. 700, there is a risk that this "rebuttable presumption" may disappear. This would subject all activities of a locality to these civil rights statutes. These statutes are enforced by an "effects" standard, i.e., regulations implementing these statutes prohibit not merely intentional discrimination, but neutral conduct which has a disproportionate impact on a particular group. Therefore, if a locality's licensing process has a disproportionate impact on a particular group, even though there is no intent to discriminate, that licensing process may be declared illegal under these statutes.

III. Paragraph 2(A) establishes coverage of the non-educational commercial activities of institutions of higher education, even when those activities do not serve students, faculty, or other educational functions. Under paragraph 2(B), as well as under paragraph (4), such coverage of non-federally assisted commercial activities also pertains to individual private schools. Such coverage was not exercised by HEW or ED before Grove City: Federal education aid was used by these agencies to subject all educational activities of a college, including intercollegiate athletics, to coverage under these statutes, but not the non-educational activities. Indeed, even the investment policies of an institution might be subjected to coverage under these four statutes for the first time. 10/

10/ See also testimony of Assistant Secretary for Civil Rights Harry M. Singleton before the House Education and Labor Committee and the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, March 7, 1985.

IV. Under paragraph 2(A) of the definition of "program or activity," if one department of a college or university in a system of higher education receives Federal financial assistance, all operations of every college or university in that system are covered. Prior to Grove City, Federal agencies only covered all of the educational activities of the college or university itself, not other colleges or universities in the same system. See, e.g., testimony of Secretary T. H. Bell, Hearings before the Subcommittee on the Constitution of the Senate Judiciary Committee, June 5, 1984, at 224. This expansive approach to coverage becomes even more significant because paragraph (4) of this section permits judges and executive enforcement agencies to analogize coverage of entities not specifically mentioned by the bill to ones which are so mentioned - such as a system of higher education.

V. Paragraph 2(B) of the definition of "program or activity" covers local (and state) educational agencies operating public elementary and secondary schools. It also adds new language not appearing in earlier versions of the bill or in agency regulations, covering "other school system[s]." Accordingly, all of the operations of private elementary and secondary school systems will be covered if any one school in that system receives any Federal aid. Thus, all operations of private religious elementary and secondary school systems will be covered whenever one such school enrolls one or more students for which it receives Title I Federal education aid for disadvantaged students or if one school receives other Federal aid. 11/ Prior to Grove City, Federal agencies treaded very lightly with respect to private religious schools. Generally, they intruded as minimally as possible, on a program-specific basis. They did so to avoid excessive entanglement and a collision with the First Amendment's establishment clause when enforcing these laws with respect to religious institutions. Such agencies not only covered the individual school receiving aid narrowly, they never sought to review any other school in a private school system.

In short, this provision represents a fundamental, clear, frontal assault on private schools and particularly private religious schools in this country. This part of the definition of program or activity is totally uncalled for if the objective is truly to restore coverage to that which agencies had undertaken before Grove City.

VI. As already noted, paragraph (3) subjects to coverage all of the operations of an entire corporation, partnership, or other private organization if any part of such entity is extended Federal aid. This coverage is also excessive in terms of pre-Grove City coverage.

11/ The same result would occur even in the absence of this phrase in paragraph 2(B): such coverage would obtain by analogy to a "local education agency" under paragraph (4).

VII. Perhaps the most dangerous provision in the bill with respect to the bill's vast expansion of Federal authority to places where it hadn't been exercised before is paragraph (4). This paragraph covers "any other entity determined in a manner consistent with coverage provided with respect to entities described in paragraph (1), (2) or (3)."

This provision is vague, open-ended, and standardless. It provides no guidance as to which unnamed entities should be analogized to what entity in the first three paragraphs.

The open-ended nature of this provision permits Federal enforcement officials, private litigants, and Federal judges to fulfill their own policy preferences in particular cases because the statutory scheme created by paragraph (4)'s interplay with the first 3 paragraphs limits the scope of the bill only to the imagination of these individuals. Paragraph (4) amounts to an open invitation to the Federal government to extend its reach virtually without limit throughout American society and for Federal regulators, private litigants, and Federal judges to work their will in places they have never been before.

The bill, for example, would subject to coverage grocery stores or supermarkets participating in the food stamp program. Yet, the Department of Agriculture has never subjected such stores to coverage under these statutes in the past. See letter of Daniel Oliver, General Counsel, Department of Agriculture to Senator Jesse Helms, June 8, 1984. I also want to submit for the record a copy of my letter to the New York Times dated September 22, 1984 which sets forth what coverage for these newly ensnared entities would mean under Section 504.

The analysis of the indirect aid coverage leading to the coverage of grocery stores participating in the food stamp program is as follows: Paragraph 2(A) covers a university which receives indirect Federal aid, i.e., one which enrolls students who themselves receive Federal student aid (Grove City makes this clear, and, of course, H.R. 700 does not overturn that portion of Grove City). Then, paragraph (4) directs coverage of "any other entity determined in a manner consistent with coverage provided with respect to entities described in paragraphs (1), (2), (3)." Thus, the coverage of an indirect aid recipient such as a university in paragraph 2(A) provides the basis of indirect aid coverage in many other instances, by analogy, pursuant to paragraph (4). Accordingly, grocery stores and supermarkets participating in the food stamp program are covered merely by virtue of such participation. This is the same result as obtained under the Civil Rights Act of 1984. 12/

This section also leads to other bizarre results. This can be illustrated in a variety of instances. A letter from counsel to the Knights of Columbus to an aide on the Senate Committee on the Judiciary concerning "The Civil Rights Act of 1984" states:

> Several of [the] local councils [of the Knights of Columbus] may receive some federal financial assistance in connection with their programs for the elderly, and the question could arise whether such assistance is attributable to the national

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12/ See 130 Cong. Rec. H7038 (daily ed. June 26, 1984) (Rep. Simon).

> or regional units of the Knights. As in most fraternal organizations, the relationship between the Knights' national and regional bodies and their local councils is sui generis, involving varying control and independence features. We believe that the legislative history should make clear that in the case of fraternal organizations, local lodges will be treated as units or subunits separate from their national or regional bodies. Otherwise, fraternal organizations will be reluctant to allow their local lodges to participate in such programs, for fear of subjecting the entire organization to complex federal controls. 13/.

How would H.R. 700 affect the Knights of Columbus?

H.R. 700 would clearly subject all of the operations of the entire Knights of Columbus organization and all of its subunits (local councils) to coverage under at least three of the four cross-cutting civil rights statutes whenever even one of its local councils received any Federal aid. This result occurs because of the interplay between "catch-all" paragraph (4) and the first three paragraphs of the bill's definition of "program or activity." Thus, paragraph 2(A) covers all operations of "a system of higher education." A system of higher education can be described as associated entities established for a general, special purpose, i.e., education, performing generally similar functions. These entities are governed, with a varying degree of autonomy and independence, by an over-arching central authority. Many other entities, such as the Knights of

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13/ Letter of Leonard J. Henzke, Jr., to Stephen J. Markman, August 3, 1984.

Columbus, B'nai B'rith, etc., are similarly structured. That is, they have subunits which are accorded a certain amount of autonomy and independence but which perform similar functions aimed at fulfilling common, specific purposes and are governed by a central structure. Paragraph (4) directs that coverage of all of the operations of "any other entity" not listed in paragraphs (1)-(3) be "determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3)." Thus, the structure of the Knights of Columbus or B'nai B'rith can readily be analogized to a system of higher education, and thereby be subjected to coverage in its entirety if just one subunit, i.e., a local council or lodge, receives any Federal aid.[14]

While it is true, of course, that the Knights of Columbus and B'nai B'rith are much different organizations than a system of higher education, the touchstone for coverage under paragraph (4) is _not_ similarity of the entities at issue. Rather, the touchstone is similarity -- consistency -- _in the manner of coverage_ between two entities. Thus, while at first glance, an analogy between a national fraternal organization and a system of higher education seems odd, this is precisely the kind of analogy provided for in H.R. 700.

In effect, the interplay of paragraphs (4) and 2(A) (and perhaps others) establishes a form of automatic "trickle up" coverage as provided in The Civil Rights Act of 1984, but avoids the use of "subunits" or "supports" -- terms used in the latter Act which gave rise to opposition to the sweeping nature of the Act. 15/

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[14] Such coverage was not exercised by Federal agencies before _Grove City_.

H.R. 700 also does not exclude "ultimate beneficiaries" from coverage, as most Federal agency regulations do. 16/ The absence of this exclusion, coupled with paragraph (3) and paragraph (4), represents one aspect of the huge expansion of Federal coverage portended by this bill. For example, the failure to exclude ultimate beneficiaries from coverage results in coverage of farmers operating farms receiving crop subsidies. 17/ Congress, however, did not intend that these statutes cover farms receiving crop subsidies 18/ and they had not been so covered by Federal agencies. Yet, many farms are corporations or partnerships or can be deemed a private organization, all covered by paragraph (3), as well as covered under the catch-all scope of paragraph (4). With the absence of the exclusion of ultimate beneficiary in the statute, and the presence of paragraphs (3) and (4), the farmers will be caught in this new Federal net and subject to

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15/ Coverage of "all of the operations of . . . other private organization" [paragraph (3)] could also, independently, yield complete coverage of the entire Knights of Columbus organization when one of its local councils receives any Federal aid.

16/ See, e.g., 7 C.F.R. 15b (Department of Agriculture Section 504 regulation).

17/ This is consistent with the scope of the Civil Rights Act of 1984.

18/ See, e.g., 110 Cong. Rec. 6545 (1964) (Sen. Humphrey) (Title VI).

thousands of words of new regulations, new paperwork requirements, random on-site compliance reviews even in the absence of an allegation of discrimination, the application of a discriminatory effects standard, and burdensome accommodation requirements under Section 504.

Some sponsors of the bill have made the erroneous assertion that Federal agency definitions of "recipient" will remain undisturbed by the enactment of H.R. 700. 19/

The bill, however, does not add the word "recipient" to the four statutes. Paragraphs (1) through (4) of the definition of "program or activity," in effect, lists those entities which become recipients under the statutes amended by the bill. The bill reflects no indication that the term "recipient" as defined in agency regulations has any role to play in enforcing these statutes. This is particularly so once the statutory term "program or activity" is defined as broadly as it is, and in terms of the entities listed in paragraphs (1) through (4): at that point, the statutes' scope of coverage, as amended by the bill, is completed. The bill, in short, supersedes current

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19/ 131 Cong. Rec. S1303 (daily ed. Feb. 7, 1985) (Sen. Kennedy) ("The regulatory definition of who or what is a 'recipient' of Federal financial assistance under these laws remains unchanged and the bill does not require any changes in it.") See also 131 Cong. Rec. S1310 (daily ed. Feb. 7, 1985) (Sen. Simon); Statement of Congressman Hamilton Fish, before the Committee on Education and Labor and the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, March 7, 1985, at page 4.

agency regulatory definitions of "recipient" and renders them superfluous, as can readily be seen by looking at one typical agency definition of "recipient":

> The term "recipient" means any State, political subdivision of any State, or instrumentality of any State, or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program. 20/

The redundancy, overlap, and confusion that would result from any effort to overlay agency definitions of "recipient" onto the bill's definition of "program or activity" in establishing coverage would seem self-evident. Indeed, to do so would rob the bill of any clarity it achieves in its second and third paragraphs 21/ and render the bill virtually incoherent. Indeed, even the apparent meaning of paragraph (1) is rendered questionable by the suggestion that the agency definition of "recipient" survives enactment of the bill. For example, paragraph (1) of the bill's definition of "program or activity" deals with state and local government agencies and the

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20/ 34 C.F.R. 100.13(i) (Department of Education's Title VI regulation).

21/ These two paragraphs are reasonably clear -- and in their clarity they demonstrably exceed the scope of coverage some agencies exercised before Grove City. Paragraph four is vague and open-ended, even without reference to agency regulations. Paragraph one is less than clear.

circumstances in which they are covered. What, then, can be added to an understanding of the bill's scope of coverage of these particular governmental entities by referencing the agency regulation's definition of "recipient" as including "any State, political subdivision of any State . . . any public . . . agency . . . in any State. . . .?" 22/

The bill's definition of "program or activity" also includes a "catch-all" paragraph (paragraph (4)). This catch-all provision provides coverage of any conceivable entity "in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2) or (3)." 23/ Even if the bill's sponsors wish to add express coverage of specific entities listed in the agency definition of "recipient," such as "instrumentality of any state," notwithstanding their implicit coverage under catch-all paragraph (4), they could do so in paragraphs (1) through (3), or by adding a new paragraph, in the definition of "program or activity." There is no need to refer to agency regulations in light of paragraph (4)'s catch-all scope.

Thus, the suggestion of three sponsors that the agency regulatory definition of "recipient" would be viable after enactment of H.R. 700 is puzzling. The purpose of such a claim, however, may be reflected in Senator Kennedy's further statement

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22/ 34 C.F.R. 100.13(i).

23/ Only "individuals" are not covered by the bill's "program or activity" definition.

that, since the agency definitions of "recipient" will be "unchanged," "entities or persons, such as farmers, which were determined not to be recipients under prior law because they were the ultimate beneficiaries of Federal assistance would not have their status changed." 24/ Of course, if the bill's sponsors had intended to exclude ultimate beneficiaries of Federal financial assistance from coverage (the overwhelming majority of agency regulations exclude such ultimate beneficiaries), they could have simply inserted that exclusion into their bill. Indeed, their failure to do so in the language of their bill, in the face of their acknowledged awareness of that exclusion in agency regulations, is evidence of their intent to discard the exclusion altogether.

In my view, it is likely that a substantial part of the purpose behind the sponsors' claim that the definition of recipient is viable after their bill would be enacted is a rhetorical one: they can seek to meet at least some of the criticisms they expect the bill to receive by pointing to agency regulations.

As a matter of statutory construction, however, the far more sensible reading of the bill's plain language, which is the most important guide to the bill's meaning, is that the bill's definition of "program or activity," in its paragraphs

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24/ 131 Cong. Rec. S1303 (daily ed. Feb. 7, 1985) (Sen. Kennedy).

(1) through (4), renders agency definitions of "recipient" superfluous and of no effect. Sponsors' suggestions to the contrary, if reflective of the purpose of the bill, would render this bill incoherent.

In conclusion, even as a measure aimed at restoring the scope of coverage undertaken by some Federal agencies prior to Grove City, H.R. 700 is fundamentally and fatally flawed. Its scope of coverage is way, way beyond that of even the broadest coverage undertaken by Federal agencies. The failure to exclude "ultimate beneficiaries" from coverage, the notoriously broad paragraph (4) and other provisions of the bill, render it an unworthy vehicle even for the purposes publicly stated by its sponsors.

The Commission statement also points out instances where both H.R. 700 and S. 272 conflict with the Commission's objectives. What I wanted to do in this testimony was to demonstrate how, even as a fulfillment of its sponsors' objectives, H.R. 700 is so fundamentally flawed.

Ms. CHAVEZ. Thank you, Mr. Chairman.

As Chairman Pendleton has indicated, staff has undertaken analyses of both H.R. 700 and S. 272. We would like to submit these memoranda for the written record of these proceedings.

Ms. CHAVEZ. My testimony is based largely on these memorandums. I intend to set forth staff views as to where H.R. 700, the subject of this hearing, extends coverage even beyond the broad scope undertaken by some Federal agencies before the *Grove City* decision.

First, I would like to make some preliminary observations, however.

H.R. 700, the so-called Civil Rights Restoration Act of 1985, is the third bill produced in a 9-month period by largely the same group of congressional sponsors with the support of the Leadership Conference on Civil Rights. Each bill is significantly different in wording and structure.

Yet each bill was described on its introduction by its sponsors as the appropriate solution to the *Grove City* decision.

By this time it should be clear, as these three very different proposals indicate, that the *Grove City* issue is a difficult matter of legislative drafting, even for those who subscribe to a broad view of coverage under the four cross-cutting civil rights statutes amended by H.R. 700.

Accordingly, criticism of the bill is not a matter of mere obstructionism or scare tactic. Yet there are some supporting the bill who, like a broken record, repeatedly cry that, in the words of Ralph Neas, executive director of the Leadership Conference, "Senators Hatch and Helms and the Reagan administration will employ the same delay and scare tactics they used last year. Indeed, the radical right has already placed the defeat of the measure at the top of their legislative agenda."

I cannot speak for any of those identified by Mr. Neas. I can tell you, however, that any effort to paint critical commentary on H.R. 700 as a scare tactic or part of some radical right scheming is itself a scare tactic which seeks to stifle honest and open debate.

To try to tar those who dare raise questions about a bill labeled "civil rights" and supported by the Leadership Conference as obstructionist or radical is a disservice both to the Congress and the American people. That tactic almost succeeded last year as this bill went through the House of Representatives. But it ultimately failed.

No group or individual has a monopoly of wisdom or knowledge concerning the issues raised by H.R. 700. I hope the criticism of this bill be accepted as constructive and on its merits.

In order to save time, I have chosen in my oral comments to concentrate on the definitions of program or activity in H.R. 700 and the resulting expansion of civil rights coverage these definitions would entail.

Under paragraph 2(A) of the bill, the definition of "program or activity", if one department of a college or university in a system of higher education receives Federal financial assistance, all operations of every college or university in that system are covered.

Prior to *Grove City,* Federal agencies only covered all of the educational activities of the college or university itself, not other colleges or universities in the same system.

This expansive approach to coverage becomes even more significant because paragraph (4) of this section permits judges and executive enforcement agencies to analogize coverage of entities not specifically mentioned by the bill to ones which are so mentioned, such as a system of higher education.

Paragraph 2(B) of the definition of "program or activity" covers local and State educational agencies operating public elementary and secondary schools. It also adds new language not appearing in earlier versions of the bill or in agency regulations covering other school systems.

Accordingly, all of the operations of private elementary and secondary school systems will be covered if any one school in that system receives any Federal aid. Thus, all operations of private religious elementary and secondary school systems will be covered whenever one such school enrolls one or more students for which it receives title I Federal education aid for disadvantaged students or if one school receives other Federal aid.

Prior to *Grove City,* Federal agencies treaded very lightly with respect to private religious schools. Generally, they intruded as minimally as possible on a program-specific basis.

They did so to avoid excessive entanglement and a collision with the first amendment's establishment clause when enforcing these laws with respect to religious institutions.

Such agencies not only covered the individual school receiving aid narrowly, they never sought to review any other school in a private school system.

In short, this provision represents a fundamental, clear, frontal assault on private schools and particularly private religious schools in this country. This part of the definition of program or activity is totally uncalled for if the objective is truly to restore coverage to that which agencies had undertaken before *Grove City.*

As already noted, paragraph (3) subjects to coverage all of the operations of an entire corporation, partnership, or other private organization if any part of such entity is extended Federal aid. This coverage is also excessive in terms of pre-*Grove City* coverage.

Perhaps the most dangerous provision of the bill with respect to the bill's vast expansion of Federal authority to places where it hadn't been exercised before is paragraph (4). This paragraph covers "any other entity determined in a manner consistent with coverage provided with respect to entities described in paragraph (1), (2) or (3)."

This provision is vague, open-ended, and standardless. It provides no guidance as to which unnamed entities would be analogized to what entity in the first three paragraphs.

The open-ended nature of this provision permits Federal enforcement officials, private litigants, and Federal judges to fulfill their own policy preferences in particular cases because the statutory scheme created by paragraph (4)'s interplay with the first three paragraphs limits the scope of the bill only to the imagination of these individuals.

Paragraph (4) amounts to an open invitation to the Federal Government to extend its reach virtually without limit throughout American society and for Federal regulators, private litigants, and Federal judges to work their will in places they have never been before.

The bill, for example, would subject to coverage grocery stores or supermarkets participating in the Food Stamp Program. Yet the Department of Agriculture has never subjected such stores to coverage under these statutes in the past.

I also would like to submit for the record a copy of my letter to the New York Times dated September 22, 1984, which sets forth what coverage for these newly ensnared entities would mean under section 504.

The analysis of the indirect aid coverage leading to the coverage of grocery stores participating in the Food Stamp Program is as follows:

Paragraph 2(A) covers a university which receives indirect Federal aid, that is, one which enrolls students who themselves receive Federal student aid. *Grove City* makes this clear, and, of course, H.R. 700 does not overturn that portion of *Grove City*.

Then paragraph (4) directs coverage of "any other entity determined in a manner consistent with coverage provided with respect to entities described in paragraph (1), (2) and (3)."

Thus, the coverage of an indirect aid recipient such as university in paragraph 2(A) provides the basis of indirect aid coverage in many other instances by analogy, pursuant to paragraph (4).

Accordingly, grocery stores and supermarkets participating in the Food Stamp Program are covered merely by virtue of such participation. This is the same result as obtained under the Civil Rights Act of 1984.

This section also leads to other results. This can be illustrated in a variety of instances.

A letter from counsel to the Knights of Columbus to an aide to the Senate Committee on the Judiciary concerning the Civil Rights Act of 1984 states, and I quote:

> Several of the local councils of the Knights of Columbus may receive some federal financial assistance in connection with their programs for the elderly, and the question could arise whether such assistance is attributable to the national or regional units of the Knights. As in most fraternal organizations, the relationship between the Knights' national and regional bodies and their local councils is sui generis, involving varying control and independence features. We believe that the legislative history should make clear that in the case of fraternal organizations, local lodges will be treated as units or sub units separate from their national or regional bodies. Otherwise, fraternal organizations will be reluctant to allow their local lodges to participate in such programs for fear of subjecting the entire organization to complex federal controls.

How would H.R. 700 affect the Knights of Columbus?

H.R. 700 would clearly subject all of the operations of the entire Knights of Columbus organization and all of its sub units or local councils to coverage under at least three of the four cross-cutting civil rights statutes whenever even one of its local councils received any Federal aid.

This result occurs because of the interplay between the catch-all paragraph (4) and the first three paragraphs of the bill's definition of "program or activity." Thus, paragraph 2(A) covers all operations of a system of higher education.

A system of higher education can be described as associated entities established for a general, special purpose; that is, education, performing generally similar functions. These entities are governed, with a varying degree of autonomy and independence, by an over-arching central authority.

Many other entities, such as the Knights of Columbia, B'nai B'rith, et cetera, are similarly structured. That is, they have sub units which are accorded a certain amount of autonomy and independence but which perform similar functions aimed at fulfilling common, specific purposes and are governed by a central structure.

Paragraph (4) directs that coverage of all of the operations of any other entity not listed in paragraph (1) through (3) be "determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3)."

Thus, the structure of the Knights of Columbus or B'nai B'rith can readily be analogized to a system of higher education and thereby be subjected to coverage in its entirety if just one sub unit, that is, a local council or lodge, receives any Federal aid.

While it is true, of course, that the Knights of Columbus and B'nai B'rith are much different organizations than a system of higher education, the touchstone for coverage under paragraph (4) is not similarity of the entities at issue. Rather, the touchstone is similarity, or consistency, in the manner of coverage between two entities.

Thus, while at first glance an analogy between a national fraternal organization and a system of higher education seems odd, this is precisely the kind of analogy provided for in H.R. 700.

In effect, the interplay of paragraphs (4) and 2(A) and perhaps others establishes a form of automatic trickle up coverage as provided in the Civil Rights Act of 1984, but avoids the use of "sub units" or "supports", terms used in the latter act which gave rise to opposition to the sweeping nature of the act.

H.R. 700 also does not exclude "ultimate beneficiaries" from coverage, as most Federal agency regulations do. The absence of this exclusion, coupled with paragraph (3) and paragraph (4), represents one aspect of the huge expansion of Federal coverage portended by the bill.

For example, the failure to exclude ultimate beneficiaries from coverage results in coverage of farmers operating farms receiving crop subsidies. Congress, however, did not intend that these statutes cover farms receiving crop subsidies and they had not been so covered by Federal agencies.

Yet many farms are corporations or partnerships or can be deemed a private organization, all covered by paragraph (3), as well as covered by the catch-all scope of paragraph (4).

With the absence of the exclusion of ultimate beneficiary in the statute and the presence of paragraphs (3) and (4), the farmers will be caught in this new Federal net and subject to thousands of words of new regulations, new paperwork requirements, random on-site compliance reviews, even in the absence of an allegation of discrimination, the application of a discriminatory effects standard, and burdensome accommodation requirements under section 504.

Some sponsors of the bill have made the erroneous assertion that Federal agency definitions of "recipient" will remain undisturbed by the enactment of H.R. 700. The bill, however, does not add the word "recipient" to the four statutes.

Paragraph (1) through (4) of the definition of "program or activity", in effect, lists those entities which become recipients under the statutes amended by the bill. The bill reflects no indication that the term "recipient", as defined in agency regulations, has any role to play in enforcing these statutes.

This is particularly so once the statutory term "program or activity" is defined as broadly as it is, and in terms of the entities listed in paragraphs (1) through (4). At that point the statutes' scope of coverage, as amended by the bill, is completed.

The bill, in short, supersedes current agency regulatory definitions of "recipient" and renders them superfluous.

The redundancy, overlap and confusion that would result from any effort to overlay agency definitions of "recipient" onto the bill's definition of "program or activity" in establishing coverage would seem self-evident.

Indeed, to do so would rob the bill of any clarity it achieves in the second and third paragraphs and render the bill virtually incoherent.

Indeed, even the apparent meaning of paragraph (1) is rendered questionable by the suggestion that the agency definition of "recipient" survives enactment of the bill.

For example, paragraph (1) of the bill's definition of "program or activity" deals with State and local government agencies and the circumstances in which they are covered.

What, then, can be added to an understanding of the bill's scope of coverage of these particular governmental entities by referencing the agency regulation's definition of "recipient" as including "any State, political subdivision of a State, any public agency in any State"?

The bill's definition of "program or activity" also includes the catch-all paragraph (4) earlier mentioned. This catch-all provision provides coverage of any conceivable entity "in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2) or (3)."

Even if the bill's sponsors wish to add express coverage of specific entities listed in the agency definition of recipient, such as "instrumentality of any State", notwithstanding their implicit coverage under catch-all paragraph (4), they could do so in paragraphs (1) through (3) or by adding a new paragraph in the definition of "program or activity". There is no need to refer to agency regulations in light of paragraph (4)'s catch-all scope.

Thus, the suggestion of the sponsors that the agency regulatory definition of "recipient" would be viable after enactment of H.R. 700 is puzzling. The purpose of such a claim, however, may be reflected in Senator Kennedy's further statement that, since the agency definition of "recipient" will be unchanged, entities or persons, such as farmers, which were determined not to be recipients under prior law because they were the ultimate beneficiaries of Federal assistance would not have their status changed.

Of course, if the bill's sponsors had intended to exclude ultimate beneficiaries of Federal financial assistance from coverage, they could have simply inserted that exclusion into their bill.

Indeed, their failure to do so in the language of the bill, in the face of their acknowledged awareness of the exclusion in agency regulations, is evidence of their intent to discard the exclusion altogether.

In my view, it is likely that a substantial part of the purpose behind the sponsors' claim that the definition of "recipient" is viable after their bill would be enacted is a rhetorical one. They seek to meet at least some of the criticisms they expect the bill to receive by pointing to agency regulations.

As a matter of statutory construction, however, the far more sensible reading of the bill's plain language, which is the most important guide to the bill's meaning, is that the bill's definition of "program or activity" in its paragraphs (1) through (4) renders agency definitions of "recipient" superfluous and of no effect. Sponsors' suggestions to the contrary, if reflective of the purpose of the bill, would render this bill incoherent.

In conclusion, even as a measure aimed at restoring the scope of coverage undertaken by some Federal agencies prior to *Grove City,* H.R. 700 is fundamentally and fatally flawed. Its scope of coverage is way beyond that of even the broadest coverage undertaken by Federal agencies.

The failure to exclude "ultimate beneficiaries" from coverage, the notoriously broad paragraph (4), and other provisions of the bill render it an unworthy vehicle even for the purposes publicly stated by its sponsors.

The commission's statement also points out instances where both H.R. 700 and S. 272 conflict with the commission's objectives. What I wanted to do in this testimony was to demonstrate how, even as a fulfillment of its sponsors' objectives, H.R. 700 is flawed.

Thank you.

The CHAIRMAN. Thank you, Ms. Chavez.

The CHAIRMAN. The next witness is Ms. Mary Frances Berry, Commissioner, U.S. Civil Rights Commission.

Ms. Berry, you are recognized.

STATEMENT OF MARY FRANCES BERRY, COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS

Ms. BERRY. Thank you very much, Mr. Chairman.

I was happy to see that we have a ½ an hour or 45 minutes to testify, if we want to. I am only kidding.

The CHAIRMAN. The Chair suggests, however, that we are being very lenient, but I hope that we can expedite it, and I hope that you will summarize and give us the highlights of your statement, if I may suggest, Ms. Berry.

Ms. BERRY. I understand, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. CONYERS. Mr. Chairman.

The CHAIRMAN. Yes?

Mr. CONYERS. After that statement, she may need 45 minutes or twice 45 minutes, and I am for giving her some more time.

The **Chairman**. Which witness are you referring to, Mr. Conyers?

Mr. **Conyers**. Well, after Ms. Chavez' statement, Ms. Berry may need more time than she thought she would need.

The **Chairman**. Well, let's try to restrict the time. I think Ms. Berry is understanding enough to know that when 5 or 6 o'clock arrives, the Chair may be the only person listening to the witnesses.

Mr. **Conyers**. I will be here, Mr. Chairman.

The **Chairman**. Let us proceed. Thank you, Ms. Berry.

Ms. **Berry**. I will proceed as quickly as possible.

Mr. Chairman, I am pleased to respond to your invitation to testify on the Civil Rights Restoration Act of 1985, and I understand that my written testimony will be included in the record. Is that correct?

The **Chairman**. Without objection, so ordered.

[Prepared statement of Mary Frances Berry follows:]

Prepared statement of Mary Frances Berry, Member of the U.S. Commission on Civil Rights

Mr. Chairman: I am pleased to respond to your invitation to testify on the Civil Rights Restoration Act of 1985. A milestone was reached in the Nation's commitment to equal opportunity when the Civil Rights Act of 1964 was passed with its Title VI, using the receipt of Federal funds as a basis for opening opportunity to persons who were previously denied opportunity on the basis of race. Similar progress was signaled in the enactment of Section 504 of the Rehabilitation Act of 1973, Title IX, and the Age Discrimination Act. Unfortunately, these statutes were not enforced as aggressively as proponents of opportunity would have liked, but the viability of the laws in question remained in force. The Supreme Court's *Grove City* decision was a setback. Congress failed last year to remedy the effects of the Court decision on those who were supposed to benefit from the laws at issue. The complaints ignored, or resolution of complaints and investigations delayed in the Department of Education give testimony to the practical effect of the Court's decision.

Last year I testified, based on Department of Education records, that since *Grove City* was decided, under Title IX at least 23 education complaints involving large institutions had been closed because it was not clear whether the alleged discrimination occurred in activities funded directly by the Federal government. They were in the areas of admissions, student services, and student support services. In six instances, the scope of compliance reviews was narrowed, and eighteen other compliance reviews and five complaint investigations had been interrupted for redefinition. In addition, nine cases involving elementary and secondary institutions and 46 involving postsecondary institutions were under review to determine whether they could proceed in view of the decision.

I testified further that since the *Grove City* decision, in OCR-Education under Section 504, five complaint cases and one pending compliance review had been narrowed as a result. Seven cases were being reviewed due to the decision to see if they could go forward. The issue most affected has been program services for disabled persons. Title VI has similary been affected in OCR-Education. One Title VI complaint had been closed, and five complaint investigations had been modified because they involved athletics, admissions programs requirements, and employee evaluation/treatment, activities not administered by the student aid office, and it was not clear whether or not they were Federally funded.

Commissioner Ramirez and I have tried unsuccessfully to get our colleagues on the U.S. Commission on Civil Rights to insist that the Staff Director collect systematically additional information on the enforcement practices in Federal agencies since the time of last year's testimony. Perhaps the Committee can do better at compiling additional information.

Last year's effort by the Congress to restore the validity of the civil rights laws that were undermined by *Grove City* failed. Apparently losing sight of the purpose of the sponsors in the national interest, opponents engaged in arguments about a state government's right to discriminate on the basis of race, or sex, or age, or handicap even when using taxes paid by all of the taxpayers and arguments about the right of individuals to receive Federal funds while discriminating. I was reminded of the states' rights amendments made by opponents of ending the exclusion of blacks from opportunity in the days when the civil rights movement impelled the passage of the civil rights laws of the 1960's. As a result of last year's failure, we now have in place a situation that many of us thought in the 1960's would never again be tolerated. We should be embarrassed that the Federal government can today subsidize invidious discrimination by institutions on the basis of race in some instances, and the Congress has not acted.

This year those with a clear vision of our national commitment to equal opportunity have made simple and straighforward adjustments to the textual difficulties some perceived in the proposed Civil Rights Act of 1984. Some people may see this as using "the *Grove City* decision as an opportunity to seek a vast expansion of authority," as my colleagues on the Commission assert. Others may believe at a time when a majority of America's voters apparently are not interested in equal opportunity issues, we should simply accept the use of our taxpayer funds to finance discrimination. But I believe Congress should provide every reasonable tool to assure the taxpayers' money is not used to construct or maintain barriers that deny opportunity to people to obtain a quality education or to receive services in hospitals or in other institutions or agencies receiving Federal funds.

Opponents and proponents know it is difficult to draft legislative language in any complex area that is entirely free of ambiguity. Congress should in this area, as others, reduce the ambiguity as much as possible. But Congress should also keep in mind the fundamental objective. The goal is at least to restore the application of the four civil rights statutes in question to the generally accepted interpretation prior to the Supreme Court's ruling in the *Grove City College* v. *Bell* case. Nothing more, nothing less.

Ms. **Berry**. I also ask, Mr. Chairman, the Commission's statement which was referred to by Chairman Pendleton had a dissent written by Commissioner Francis Guess in which I joined and Blandina Cardenas Ramirez. I ask if that also can be entered into the record?

The **Chairman**. Without objection, so ordered.

Ms. **Berry**. Thank you very much, Mr. Chairman.

We dissented from the Commission's statement for some very clear reasons, most of which relate to the statement you have just heard from the Chairman and the staff director.

We felt that the criticisms that they were making of H.R. 700, the specific criticisms that they were making had no validity.

We were aware, for example—I will only refer to three here that come to mind, since this was presented to you here in oral testimony.

The first one was a concern about corporations, entire corporations being covered, and that this was something that had not happened before.

We were familiar with the law in that regard and although Mr. Taylor, I think, is covering this in his written testimony, I will just point out here that we know that on corporate coverage since the statute was passed, there haven't been as many cases involving services as employment, because that is usually the kind of case you get.

But where there have been questions of this kind, corporate-wide coverage has been the announced rule by the court, and there are any number of cases that can be cited, and we were aware of that.

So, we weren't concerned about this bill expanding corporate coverage more than it was before.

As far as systems of higher education are concerned, Mr. Chairman, I had had experience both in the Nixon administration, when I was a consultant to the Office of Higher Education in HEW and organized that office with the enforcement of the civil rights laws that were on the books, including title VI, as they regard higher education institutions—I then had experience as chancellor at the University of Colorado at Boulder, administering a campus and a system of higher education and was familiar with the requirements of the law that we had to abide by.

Before that I was provost at the University of Maryland, College Park, which is another campus within a system and was very familiar with what we had to abide by, and after that served as Assistant Secretary in HEW for all of education and worked with Mr. David Tatel, who testified here on March 28 to his experience.

And I can say most emphatically that there is nothing in H.R. 700 that says anything that relates to a system of higher education that is contrary to what we enforced.

I agree with Mr. Tatel's statement, in particular with the *Adams* cases that have been going on almost as long as *Jarndyce* v. *Jarndyce* and *Bleak House,* involving southern State systems of higher education.

As long as one program or any program or department in the system received Federal money, that was the basis for proceeding and that was the general rule that was abided by, and I don't see anything in H.R. 700 that would change that.

So that as for the analogy to the Knights of Columbus and B'nai B'rith, which was supposed to present a problem since it would be treated like systems of higher education, since systems of higher education don't present a problem, then I don't understand why the analogy would.

Commissioner Guess, Commissioner Ramirez, and I understood these matters, which is why we rejected out of hand the Commission's attempt to justify a retreat in the enforcement of the civil rights laws that have been on the books for so long.

Furthermore, we believed that the most important thing the Commission on Civil Rights could have done to help the Congress and the people was to make a fact-finding investigation as to what has been happening since *Grove City* to actual students and teachers and people out there, whether it is in health care or any area of the law.

I testified here last year based on Department of Education records that someone was kind enough to give to me about the number of complaints that had been delayed and not investigated. That was finally attested to by Secretary Bell when he came to testify, that my information was correct.

And Commissioner Ramirez and I have tried unsuccessfully ever since last year to get our colleagues on the Commission on Civil Rights to insist that our staff director use the staff to collect systematically additional information on the enforcement practices in Federal agencies, and I think that would have helped to shed some light on what was going on here, in addition to giving us the Commission's general counsel's office legal analysis.

I hope that this committee can perhaps get some better information. Maybe you have ways of getting our staff to do things that we don't have the ability to do.

But I would be very interested in seeing what that data is, Mr. Chairman.

Now, last year, despite the best efforts of members of this committee and despite the best efforts of the House, we did not restore the validity of the civil rights laws that were undermined by *Grove City*.

And what disturbed me and my colleagues, Guess and Ramirez, in the debates more than anything else—and this year again—is that we seem to be losing sight of the purpose of the sponsors of the legislation.

We are arguing and refighting battles that many of us thought we had fought out in the 1960's. We are refighting the issue as to whether States or individuals or institutions ought to be able to get Federal funds and go ahead and discriminate if they feel like it on the basis of race or sex or solely on the basis of handicap or age.

What we are really doing, and we have had since last year a situation that many of us thought in the 1960's would never again be tolerated in this country, and we have been tolerating it since last year, and now we sit here talking about States' rights and institutions' rights to discriminate, and individuals' rights to discriminate, as if that is a question we want to revisit.

Perhaps we do. But what we hope you will do, Ramirez, Guess, and I, is that at least you will restore the applicability of the laws back to where they were last year.

And anyone knows that it is difficult to draft legislative language in any complex area of the law. Anyone knows that. And it is difficult to draft legislation that is entirely free of any possible ambiguity.

All that Congress can do in this area, as others, is reduce the ambiguity as much as possible. But I hope you will keep in mind the fundamental objective, which is not to fight those battles of the 1960's over again, but to at least restore the application of these four civil rights statutes, nothing more, nothing less.

Thank you, Mr. Chairman.

The **CHAIRMAN**. Thank you, Ms. Berry.

The next witness is Mr. Gordon Jones, vice president for government and academic relations at Heritage Foundation.

STATEMENT OF GORDON JONES, VICE PRESIDENT FOR GOVERNMENT AND ACADEMIC RELATIONS, HERITAGE FOUNDATION

Mr. **JONES**. Thank you, Mr. Chairman.

I can assure the committee that I will not take more than my 5 minutes.

I appreciate this opportunity to testify. I have looked with some care at testimony of previous witnesses and listened with appreciation today to what I have heard. I always like to analyze the legal complexities and the letter of the law, though I tend myself—my eyes tend to glaze over before too long and I generally try to retreat to the high ground of principle.

I appreciated what Dr. Berry said about fighting battles that we thought were settled in the 1960's, and in a sense I think that she is right. That is what this discussion is about.

The question is not will we tolerate discrimination supported by Federal funds, but what constitutes discrimination.

And I am reminded that in the *Grove City* case, which sparked all this legislative interest, there was no finding of discrimination by Grove City College, and as far as I am aware no one has ever charged Grove City with discrimination.

What Grove City did was refuse to participate in a compliance procedure which many Americans think has very little to do with discrimination but a great deal to do with what we used to call reverse discrimination—that is, inequality of result.

And I think I would like in my few minutes to return to that basic question of what the policy of our Nation ought to be with respect to race, ethnic, and gender considerations in this country.

I believe that as to legal policy that the national policy should be a policy of colorblindness. Existing civil rights statutes certainly should be vigorously enforced with respect to individuals, but we should recognize that civil rights inhere in individuals and not in groups.

The concept of group rights should be, I believe, rejected and I believe that it is rejected by the majority of Americans of all races and all ethnic groups.

In the last couple of days there were articles in the Washington Post that I think illustrate some of the dangers of dealing with or pampering or looking at the possibility of considering rights as groups.

Mayor Barry of the city of Washington is charged by Hispanics with not meeting their needs. They constitute 10 percent of the population of the District of Columbia, but they have only 1 percent of the employment positions in the District of Columbia.

It seems to me I have heard that argument before.

And then the U.S. District Court has thrown out the fire department's promotion policy as unconstitutional and illegal.

Now, I don't know what the right or the wrong of either of those situations is. But I do know that that is the kind of battle that you can expect when rights are thought to inhere in groups and any group has an established valid claim to certain outcomes, either in employment or in education or in anything else.

And that is why, in my written testimony, Mr. Chairman, I suggested that the committee ought to consider the possibility of establishing a racial and ethnic classification commission of some kind, because somebody is going to have to start deciding who fits these criteria.

If the Government is going to allocate benefits, and that is what we are talking about—if the Government is going to allocate benefits on the basis of such irrelevant criteria as race and ethnicity and gender, then somebody is going to have to make decisions.

Now, we may be able to tell who is a man and who is a woman, although the *Rene Richards* case should make us think that even that can be a chancy question.

But we have seen in the South, we have seen in Nazi Germany, we see in South Africa today very complex systems established for determining who is black, who is white, who is in this ethnic group and who is in that.

And I don't believe that in this Nation we want to follow the path of Lebanon and Lebanize our political system.

And I urge the committee and the Congress to pull back from a very dangerous course of legislative action.

Thank you.

The CHAIRMAN. Thank you.

[Prepared statement of Gordon Jones follows:]

PREPARED STATEMENT OF GORDON S. JONES, VICE PRESIDENT, GOVERNMENT AND ACADEMIC RELATIONS, HERITAGE FOUNDATION

Mr. Chairman: My name is Gordon Jones, and I am Vice President for Academic and Government Relations for the Heritage Foundation. I would like to thank you for this opportunity to address the Committee on H.R. 700. It is critically important that the Committee hear from those who are urging caution on this legislation. We are dealing here with legislation of considerable impact. That much is admitted on all sides of the issue. There is no reason to rush into action before all the implications are thoroughly explored.

As an example, let me remind the Committee that legislation was proposed last year to correct the supposed problems of the Grove City decision of the Supreme Court. We were told that the legislation then proposed was immutable, perfect, that not a comma could be changed without destroying it.

Here we are almost a year later with quite a different bill before us, designed to accomplish the same ends. And once again we are being told that there will be no amendments, that the bill is perfect. I would like to suggest that last year's bill could have been improved, and that this year's bill can be improved.

Let me suggest some areas of potential difficulty which should be addressed before this legislation is passed.

One is the question of what constitutes "assistance," or "aid." There are profound difficulties in accepting the Supreme Court's decision that aid to a student equals aid to the university where the student spends that aid. If indirect aid equals direct aid in that situation, there are no limits to the reach of the federal government, because everyone receives benefits of some kind. Anyone who provides goods and services to recipients of food stamps, Small Business Loans, Social Security checks, dairy price supports, or any other payment from the government would be subject to all the reporting, administrative, and enforcement procedures of the federal bureaucracy. I don't believe the principle is firmly established, but there is even some case law holding that tax exemptions constitute a benefit to an individual or an institution.

I had always thought that there was some benefit in preserving some areas of our lives which are not subject to federal authority. There will be no such areas if this legislation passes without some clarification of what is meant by the term "aid."

Another way to preserve enclaves of our lives free from federal intervention is by tightening the definition of "recipient." In particular, there needs to be an exclusion for "ultimate beneficiaries," as has existed previously.

It may be permissible, desirable even, to include an entire university campus if discrimination is found in a federally assisted program of the school, but it is quite a different matter to say that an infraction in a job training program run by a company in one State brings under coverage every aspect of what may be a multi-national corporation, or to say that a violation in a police department in rural Michigan brings under coverage every unit or subunit of the State government. In the particular argot that is developing around these proposals, the "trickle down," "trickle up," and "trickle around" theories need to be explicitly rejected.

In that last statement, I was careful to use the term "violation," rather than "discrimination." The reason is that under many regulations promulgated by federal agencies, regulations that would be explicitly approved and encouraged by this legislation, no discrimination need be proved before penalties, in the form of goals, quotas, and federally-imposed timetables are called into play. All that need be shown is that there is a statistical imbalance in employment, in admission, in compensation, or whatever other criterion can be devised by inventive federal bureaucrats or civil rights lawyers. In other words, the usual understanding that the accused is innocent until proven guilty is reversed. This reversal has been adopted in a number of specific instances in law, in regulation, and in some court decisions, but we should never be comfortable with it. We should never stand by and acquiesce in its pernicious effects on our freedoms.

I am particularly concerned about one provision of H.R. 700. That is the language that writes into law "all of the regulations" issued under the four civil rights statutes "as presently interpreted." In all candor, Mr. Chairman, I have to say that that is the single worst example of statutory language I have ever seen. Laws ought to be as clear as they can be made, and to include in them regulatory language that is subject to interpretation varying from department to department, and from administrator to administrator, and from court to court, is a prescription for confusion unparalleled in my experience. If nothing else is changed in this bill, that language should be discarded.

The regulation in question contain requirements and provision for what are usually called goals and quotas for minority hiring and advancement. Including them makes it imperative to include in the legislation careful definitions of what constitutes status in a minority group.

We have already seen, for example, that where there are minority business set-asides in some federal contract requests, non-minority businesses attempt to get in on the action. The plain fact is that when government allocates benefits on the basis of race, ethnicity or gender or other irrelevant criteria, individuals will attempt to qualify under those criteria. Someone is going to have to decide, under this legislation, who is black, who is Hispanic, and so on. It may be easiest to decide who is a man and who is a woman, but as Renee Richards should have taught us, even that is chancey at times.

I assume that if this legislation passes, it will necessary to establish some form of Ethnic and Racial Classification Commission, charged with making these tricky judgments. In fact, the Committee may wish to consider the need for such a commission before reporting this legislation to the full House. At the very least, it should provide the courts, who will be called upon to settle the inevitable controversies, with as much guidance as possible as to the criteria which should be used.

I offer that suggestion in all seriousness, because something like such a commission will clearly be needed if this legislation passes. However, I hope that the members of this Committee will think better of this entire line of legislation. The fact is that it would be a mistake to write into law a requirement that race, gender, and ethnicity be considered in the allocation of governmental benefits. The 1964 Civil Rights Act established the legal equality of all men and women, of whatever race, color, creed, or ethnic group. That equality is enforceable in the courts with respect to individuals, and such enforcement should be vigorous and permanent. But rights inhere in individuals. They do not belong to groups. To insist on numerically equal outcomes in every aspect of our society is to grant to the government the kind of absolute power associated with totalitarian states. The temptation is great, but if we are to remain a free nation, it is a temptation that must be resisted.

I urge the Committee and the Congress to reject the philosophical position that underlies this legislation, and to insist that our laws remain colorblind. The mistakes of our past should not lead us into even greater mistakes in the future.

The CHAIRMAN. The next witness is Mr. Mark de Bernardo, manager of Labor Law, Chamber of Commerce of the United States.

Mr. de Bernardo, we welcome you.

STATEMENT OF MARK A. de BERNARDO, MANAGER OF LABOR LAW, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. DE BERNARDO. Thank you, Mr. Chairman.

I am Mark A. de Bernardo. I am manager of Labor Law for the U.S. Chamber of Commerce. I am also committee executive of the chamber's labor relations committee.

Accompanying me today, to my right in the first row seats Virginia Lamp. She is a labor relations attorney for the U.S. Chamber of Commerce.

The chamber welcomes this opportunity to appear before this joint hearing, to express our concerns about the *Grove City College* case, our opposition to the Civil Rights Restoration Act of 1985, and our support for the civil rights amendments of 1985.

The chamber also wishes to commend and thank the chairman, the ranking minority members, the members of the committee and subcommittee for conducting these joint hearings, for providing this forum for discussion and debate on what is a very critical issue for all concerned.

The U.S. Chamber, on behalf of its more than 180,000 members, has a keen interest in our Nation's equal employment and civil rights laws. The chamber is committed to the principles of equal employment opportunity and affirmative action and heartened by the advances which have been made in these areas, particularly in the last 25 years. There is no room in America's work places for discrimination.

However, there also is no room for the radical and unwarranted expansion of Federal authority which H.R. 700 represents.

While the chamber has long espoused a policy of promoting an informed and conscientious business community's adherence to both the letter and spirit of title VII and other antidiscrimination laws, we also are cognizant that extremism in public policy can create more problems than it solves.

Extreme Government intervention can be more of a threat to civil rights and liberties than the safeguard its proponents intend it to be, and in our opinion H.R. 700 typifies such extremism.

To summarize the chamber's position, we oppose H.R. 700. We feel that this legislation substantially and inappropriately expands the coverage and sanctions of four civil rights statutes.

H.R. 700 and its identical Senate companion bill, S. 431, represent a massive expansion of Federal authority over the workplace. Similarly, these bills would expand greatly Federal control and authority over State and local governments, educational institutions, and a wide range of private institutions.

The chamber believes that H.R. 700 goes far beyond reversing the *Grove City* decision. This bill represents a sweeping transformation of our civil rights laws beyond not only the current status of the law, but also the original intent of Congress and the interpretation of these laws prior to the *Grove City* decision.

The U.S. Supreme Court in the *Grove City* case dealt with the issue of what limitations should exist on the application of civil rights statutes to educational institutions receiving Federal funds. That issue is highly parochial compared to the issues being addressed by Congress under the name of *Grove City*.

What is at stake now is a massive expansion of Federal authority over the workplace, and farms, State and local governments, schools, religious institutions, social clubs, even individuals.

H.R. 700 represents a threat to the business community because of overlapping and contradictory enforcement structures, because of duplicative recordkeeping, new private rights of action, and a quantum leap in Federal control of private employment practices.

This legislation would extend dramatically the coverage of four heretofore specialized civil rights laws to a wide spectrum of employers, especially small businesses, who were never covered or intended to be covered in the past

Moreover, if enacted, H.R. 700 would exacerbate the worst aspects of our judicial system, forum shopping, multiple claims, and harassment actions.

But ironically, H.R. 700 also represents a threat to the disadvantaged and underprivileged of our society.

What would be the ultimate response of employers to enactment of H.R. 700? The Chamber fears that employers would be forced into a position whereby the price that employers would be forced to pay to participate in Federal programs would be too high.

The CHAIRMAN. Mr. de Bernardo, the Chair regrets having to interrupt, but there is a vote pending in the House. The Members have only about 10 minutes to make that vote. For that reason, I would appreciate you suspending at this time so the committee can take a recess, a 10-minute recess. And you will be, obviously, the witness in the chair at the time that we return.

Thank you very much.

The committee is in recess for 10-minutes.

[Recess.]

The CHAIRMAN. The committee is called to order.

Mr. de Bernardo was testifying at the time we recessed. We will begin with him.

Mr. DE BERNARDO. Mr. Chairman, I was just pointing out that in many respects, H.R. 700 represents a threat to the business community, and listed some of the aspects in which we see it as a threat to the business community.

Second, I was pointing out that, ironically, we also see it as a threat to the disadvantaged because of the effect it would have in creating a disincentive for employers to be involved in the voluntary programs, such as programs in the training and education areas.

Rather than accept the plethora of strings attached to Federal dollars, corporations understandably might retreat into a private sector shell to the disadvantage of many.

For example, handicapped, veterans, and minorities who are involved in job programs which include some Federal funding may find the business community reluctant to participate when participation subjects employers to broadly applied, substantial new administrative costs, compliance reviews, and potential legal liabilities.

The spirit of volunteerism in employers, no matter how well intentioned, may well be dispirited by this legislation.

Perhaps the biggest area of concern for us deals with H.R. 700's scope, and if I could point out a couple of aspects of that in terms of our concerns.

A major problem with last year's legislation was the broad definition of "recipient." This year's legislation does not solve that problem. It merely transfers it to another definition.

While H.R. 700 fails to define "recipient" appropriately or inappropriately, it does define "program or activity" for the purposes of determining coverage of the four affected statutes.

The bill defines "program or activity" in such a broad fashion that it is questionable whether any parameters at all have been set to delineate the reach of these laws.

Through tracing the flow of Federal dollars through trickle down, trickle up, and trickle across, this legislation has the potential of radically altering any previous concept or application of Federal authority.

The strings attached to Federal funds would thus become chains, chains of an almost indeterminable length.

The precise scope of coverage of H.R. 700 is unclear. However, what is clear is that H.R. 700 is far too broad in the range of coverage which is possible and would be, if enacted, fundamentally unfair to business and many other affected parties.

I would like to make a note on the funding termination provision, as well, which we see as being a wrong approach.

Earlier I pointed out that the bill, H.R. 700, if enacted, would create a disincentive for employers to become voluntarily involved in programs which we consider to be good government programs, programs which benefit many.

In the same line of thinking, the fact that the breadth of the funding termination provision is so broad would also affect the innocent and a wide range of programs negatively, as well.

H.R. 700 eliminates the pinpoint provision and allows the various enforcing agencies to withdraw all Federal assistance to the entire entity in noncompliance.

Such broad stroke funding termination would penalize the innocent, cutting off Federal assistance to a much wider range of entities and, correspondingly, to a much wider range of individuals benefiting from those Federal programs.

I would also like to make a note on the law pre-Grove City.

The Civil Rights Restoration Act of 1985 does not restore previous law, in our opinion, at all, but in fact goes far beyond, far beyond the current law, far beyond the concensus interpretation of the law prior to the *Grove City* decision, and far beyond the majority judicial interpretations of congressional intent.

If the intent of Congress is to return the law to where it was pre-Grove City, H.R. 700 does not do it.

In our conclusion I would like to state that the Supreme Court's *Grove City College* v. *Bell* decision could have inequitable ramifications. In this regard, the Chamber of Commerce supports legislation which would provide for a simple reversal of this decision.

We believe that S. 272, the Dole-administration bill, accomplishes this goal in a fair and appropriate manner.

The Civil Rights Restoration Act of 1985, however, is an inappropriate and unacceptable response to the *Grove City* decision.

The U.S. Chamber opposes H.R. 700 and S. 431 and urges Congress not to enact this legislation.

Thank you, Mr. Chairman, and members of these committees.

The CHAIRMAN. Thank you.

[Prepared statement of Mark A. de Bernardo follows:]

PREPARED STATEMENT OF MARK A. DE BERNARDO, ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

I. Statement of Interest

I am Mark A. de Bernardo, Manager of Labor Law for the Chamber of Commerce of the United States. I serve as the Committee Executive for the U.S. Chamber's Labor Relations Committee and am a member of the District of Columbia Bar and the American Bar Association labor committees. Accompanying me today is Virginia B. Lamp, Labor Relations Attorney for the U.S. Chamber.

The U.S. Chamber welcomes this opportunity to appear before this joint hearing of the House Education and Labor Committee and the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee to express our concerns about the Grove City College v. Bell decision[1], our opposition to the Civil Rights Restoration Act of 1985 (H.R. 700/S. 431), and our support for The Civil Rights Amendments of 1985 (S. 272).

The Chamber also wishes to commend and thank the Chairmen, Ranking Minority Members, and Members of the Committee and Subcommittee conducting these joint hearings for providing this forum for discussion and debate on what is a very critical issue for all concerned. It is our hope that a full and reasoned examination of all the issues involved in the Grove City debate and all the potential ramifications of the legislative alternatives now under consideration will prove well worth the time and effort.

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[1] 104 S. Ct. 1211 (1984).

The U.S. Chamber, on behalf of its more than 180,000 members, has a keen interest in our nation's equal employment and civil rights laws. The Chamber is committed to the principles of equal employment opportunity and affirmative action and heartened by the advances which have been made in these areas, particularly in the last 25 years. There is no room in America's workplaces for discrimination.

However, while the Chamber has long espoused a policy of promoting an informed and conscientious business community's adherence to both the letter and spirit of Title VII and other anti-discrimination laws, we also are cognizant that extremism in public policy can create more problems than it solves.

Extreme government intervention can be more of a threat to civil rights and liberties than the safeguard its proponents intend it to be.

H.R. 700 typifies such extremism.

II. Summary of the Chamber Position

The U.S. Chamber of Commerce opposes The Civil Rights Restoration Act of 1985 because this legislation substantially and inappropriately expands the coverage and sanctions of four civil rights statutes.[2/]

[2/] H.R. 700, if enacted, would amend Title VI of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000d et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794, and The Age Discrimination Act of 1975, 42 U.S.C. Sec. 1601 et seq.

H.R. 700 and its identical Senate companion bill, S. 431, represent a massive expansion of federal authority over the workplace. Similarly these bills would expand greatly federal control and authority over state and local governments, educational institutions and a wide range of private institutions.

The Chamber believes that H.R. 700 goes far beyond reversing the Grove City decision. This bill represents a sweeping transformation of our civil rights laws beyond not only the current status of the law but also the original intent of Congress and the interpretation of these laws prior to the Grove City decision.

The U.S. Supreme Court in the Grove City case dealt with the issue of what limitations should exist on the application of civil rights statutes to educational institutions receiving federal funds. That issue is highly parochial in contrast to the issues being addressed by Congress in the name of "Grove City."

What is at stake now is a massive expansion of federal authority over the workplace -- and farms, state and local governments, schools, religious institutions, social clubs, even individuals.

H.R. 700 represents a threat to the business community because of overlapping and contradictory enforcement structures, duplicative recordkeeping, new private rights of action, and a quantum leap in federal control of private employment practices. This legislation would extend dramatically the coverage of four heretofore specialized civil rights laws to a wide spectrum of employers, especially small businesses, who were never covered or intended to be covered. Moreover, if enacted, H.R. 700 will exacerbate the worst aspects of our judicial system -- forum shopping, multiple claims, and harassment actions.

But H.R. 700 also represents a threat to the disadvantaged and underpriviledged of our society. What would be the ultimate response of employers to enactment of H.R. 700? The Chamber fears that employers would be forced into a position whereby the "price" of participating in federal programs would be too high. Rather than accept the plethora of strings attached to federal dollars, corporations understandably might retreat into a private sector shell to the disadvantage of many. For example, handicapped, veterans, and minorities who are involved in job programs which include some federal funding may find the business community reluctant to participate when participation subjects employers to broadly-applied, substantial new administrative costs, compliance reviews, and potential legal liabilities. The spirit of volunteerism in employers -- no matter how well-intentioned -- may well be dispirited by this legislation.

The U.S. Chamber in its policy on equal employment opportunity:

- Supports "all reasonable and necessary steps designed to achieve the goal of equal employment opportunity for all";
- Believes "governmental action should be carefully guided ... to insure fairness and due process of law for all"; and
- Further believes that "grants of authority to administrative agencies should be strictly construed and carefully defined."[3]

The Civil Rights Restoration Act of 1985 contradicts each of these precepts:

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[3] Policy Declarations, adopted by the Chamber of Commerce of the United States, p. 134 (emphasis added).

- Because its scope of coverage and sanctions is far too broad, H.R. 700 is unreasonable and unnecessary to the appropriate goal of preservation of civil rights;

- Because the bill is overbroad and ambiguous, particularly in its definition of "program or activity" which triggers coverage, it is not "carefully guided," "strictly construed" or "carefully defined;" and

- Because H.R. 700 would, inter alia, subject farmers, ranchers, and other small business men and women to a hailstorm of new rules and regulations from incidental contact with federal dollars, this bill does not "insure fairness"; it insures unfairness.

When The Civil Rights Act of 1984 [4] was introduced, the U.S. Chamber directly addressed the issues presented in the Grove City debate. The result was adoption of the following policy:

> The Chamber of Commerce of the United States opposes any legislation which would unnecessarily: (1) expand federal control of private employment practices, (2) enlarge federal jurisdiction in the public sector, especially over state and local government institutions, (3) increase the number of agencies able to bring equal employment opportunity enforcement proceedings, or (4) create a great surge in litigation by granting broader rights of action to private plaintiffs.[5]

The Civil Rights Restoration Act of 1985 clearly conflicts with this policy. H.R. 700 should not be enacted.

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[4] S. 2568/H.R. 5490

[5] This policy statement was approved by the Chamber's Labor Relations Committee, and subsequently by its Board of Directors, becoming the official policy of the Chamber on July 25, 1984. This statement provided the basis for Chamber oppositions to The Civil Rights Act of 1984, S. 2568/H.R. 5490.

III. Decreased Employer Participation in Federal Programs

A major effect of H.R. 700 on the private sector would be a withdrawal of employers from participation in voluntary federal programs, to the detriment of large segments of our society.

Employers recognize that H.R. 700 would greatly expand the application of a myriad of current regulations to company activities totally unrelated to the operation of a federally-assisted program. Because "good faith" involvement in a federally funded program would subject that employer in all of its operations to increased reporting requirements, compliance reviews, and potential legal claims, that employer might be likely to withdraw from such participation altogether.

One critical area where there would be significant adverse consequences would be federal training and employment programs. Although Section 167 of The Job Training Partnership Act (JTPA) clearly subjects those entities operating training programs to nondiscrimination prohibitions, JTPA does not extend those prohibitions to employing establishments that are in contact with JTPA programs. Under H.R. 700, because such employers would be "a corporation ... or any other entity ... any part of which is extended Federal financial assistance,"[6] coverage would be extended and employers might not participate for fear of increasing their exposure and liability under the various civil rights laws.

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[6] Sections 3, 4, and 6, paragraphs (3) and (4); and Section 5, paragraphs (4)(c) and (d), of H.R. 700 which, in part, defines "program or activity" for purposes of coverage.

Under Secretary of Labor Ford B. Ford expressed this concern while responding to a Senate inquiry about what the effect of The Civil Rights Act of 1984 would be on Department of Labor programs:

> It is possible, therefore, that S. 2568 would cause employers to avoid federally supported training and employment services in a belief that they were prudently avoiding 'new' burdens or compliance risks. Under such circumstances, employers:
>
> - Might not provide training slots for JTPA;
> - Might not provide training slots for The Emergency Veterans Job Training Act (EVJTA);
> - Might not list jobs with the employment service;
> - Might not take advantage of the Targeted Jobs Tax Credit (TJTC); and
> - Might not serve on Private Industry Councils (PICs) and State Job Training Coordinating Councils (SJTCCs) ...
>
> In sum, (because S. 2568 would "discourage employers' participation" in training and employment services, it would) condemn such activities to futility.[7]

Although Under Secretary Ford's concerns were about the effect of The Civil Rights Act of 1984, we are convinced that The Civil Rights Restoration Act of 1985 would have the same "chilling" effect on employers' willingness to participate in federal employment and training programs. The result would be decreased job opportunities for those in our society whose need for such opportunities is greatest.

Ironically, if enacted, H.R. 700 would have the unintended negative effect of being counterproductive to the goals of a host of worthwhile federal programs.

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[7] Letter from the Honorable Ford B. Ford, Under Secretary of Labor to Senator Orrin Hatch, Chairman of the Labor and Human Resources Committee dated June 25, 1984, p. 2 (emphasis added).

IV. H.R. 700's Scope: A Major Problem Area

The Civil Rights Restoration Act of 1985, like its predecessor legislation, The Civil Rights Act of 1984, is unclear in just how far its coverage extends. However, what is clear is that coverage extends far beyond any parameters previously imagined or suggested.

A major problem with last year's legislation was the broad definition of "recipient." This year's legislation does not solve that problem, it merely transfers it to another definition. While H.R. 700 fails to define "recipient" -- appropriately or inappropriately -- it does define "program or activity" for the purposes of determining coverage of the four affected statutes.

The bill defines "program or activity" in such a broad fashion that it is questionable whether any parameters at all have been set to delineate the reach of these laws. Through tracing the flow of federal dollars through "trickle down," "trickle up," and "trickle across," this legislation has the potential of radically altering any previous concept or application of federal authority.

The "strings" attached to federal funds would thus become chains -- chains of an almost indeterminable length.

The definition of "program or activity" in The Civil Rights Restoration Act of 1985 is:

> For the purposes of this title, the term "program or activity" means all of the operations of --
>
> (1)(A) a department or agency of a State or of a local government; or
>
> (B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

> (2)(A) a university or a system of higher education; or
>
> (B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;
>
> (3) a corporation, partnership, or other private organization; or
>
> (4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);
>
> any part of which is extended Federal financial assistance.[8]

The bill extends these four civil rights statutes to corporations and partnerships, as well as to "other private organizations ... or any other entity," which is "determined in a manner consistent" with the other provisions. This represents a "catchall" provision which truly "catches all."

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[8] The Civil Rights Restoration Act of 1985, Sections 3 through 6 (emphasis added).

Furthermore, there is no "consistent" manner of determination because there have been no determinations. Paragraph (4) is ambiguous and confusing and clearly would require extensive litigation to give it meaning.

More importantly, coverage is extended by this section to "all of the operations ... any part of which is extended Federal financial assistance." Can there be any doubt that all of a corporation's operations -- including its parent companies, holding companies, subsidiaries, and franchises -- would be covered if "any part" of that business received any federal assistance?

Under a "trickle down" application, "extended Federal financial assistance" could be interpreted to mean direct or indirect extension, further fueling the engine of government intervention.

Is it the intention of the proponents of the Civil Rights Restoration Act of 1985 to subject —

- Grocery stores which accept food stamps;
- Pharmacies which fill Medicare prescriptions;
- Ranches which participate in federal irrigation projects;
- Farms which receive federal price supports or disaster loans;
- Insurance offices administering Medicare or Medicaid programs;
- Apartment owners accepting rental vouchers; and
- Other small businesses

--to extensive government requirements, inspections, and intrusions by unknown regulators on unknown regulations because there is that nexus, however tenuous, to "federal financial assistance"?

Is it the intention of the proponents of this bill to subject such small businesses to:

- Numerous complex new affirmative action rules and regulations;
- On-site compliance inspections;
- Overlapping and contradictory enforcement structures;
- Duplicative recordkeeping requirements; and
- New private rights of action?

Could a corner grocery store, because it is an "entity" which by virtue of its acceptance of food stamps is "extended Federal financial assistance" under this bill,[9/] be brought to court to hire the handicapped or elderly, or because it failed to provide access ramps for the handicapped, or widened aisles, lowered shelves, or home delivery for the disabled?

H.R. 700 raises significant coverage questions in other respects: there appears to be no cutoff of coverage -- up or down the corporate ladder -- to "all of the operations of ... a corporation ... (if) any part (is) extended Federal financial assistance."

[9/] Under paragraph (3) of Sections 3, 4, and 6, and paragraph (4)(c) of Section 5, a grocery store may be considered a "corporation, partnership, or other private organization," either unto itself or as a subsidiary of a corporate entity which receives federal dollars in some other capacity; or it may be covered under the catchall provision as "any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3)" because the "manner consistent" could be considered analogous to the Grove City College situation whereby enrollment of a single student receiving federal student loans triggers coverage of the college itself, despite the fact Grove City College accepts no federal funding directly.

This may well mean that if one plant of an automobile manufacturer participates in a federal jobs program, the entire organization in all its plants and subsidiaries is extended first-time coverage of the four affected civil rights statutes. How is a plant manager or supervisor at one plant in one state expected to know of, much less to comply with, four statutes, the application of which is based on another plant manager's participation in good faith in a federal jobs program at a plant on the other side of the country? Moreover, is H.R. 700 intended to trigger coverage from the parent company of a retail chain to all its franchises or from one franchise up the corporate system to the parent company and then to all other franchises? H.R. 700's "all the operations ... any part of which" language suggests that the answer to these questions should be "yes."

Is this fair to those employers -- or their employees, stockholders, creditors, and customers? Extension of coverage could force sizeable economic expenditures and create significant disruption of operations or current personnel practices.

The precise scope of coverage of H.R. 700 is unclear. However, what is clear is that H.R. 700 is far too broad in the range of coverage which is possible and would be, if enacted, fundamentally unfair to businesses and many other affected parties.

V. H.R. 700's Funding Termination Provision: The Wrong Approach

The Civil Rights Restoration Act of 1985 would expand greatly the federal government's power to deny or terminate financial assistance. Such funding termination, as provided for in H.R. 700, is too broad in application and would penalize too wide a spectrum of employers and other beneficiaries of federal programs.

H.R. 700 not only extends substantially the reach of the four civil rights statutes, but it also increases dramatically the sanctions for noncompliance under these laws. Currently, noncompliance is penalized by withdrawal of federal funding from "the particular program, or part thereof, in which such noncompliance has been found."[10/]

H.R. 700 eliminates this "pinpoint provision" and allows the various enforcing agencies to withdraw all federal assistance to the entire entity in noncompliance. Such broad stroke funding termination would penalize the innocent, cutting off federal assistance to a much wider range of entities, and, correspondingly, to a much wider range of individuals benefiting from these federal programs.

H.R. 700 provides for fund termination "to the particular assistance which supports such noncompliance,"[11/] a novel and elastic concept requiring no primary nexus between the entities in noncompliance[12/] and entities cut off from federal assistance. Funding cut off ceases to be an equitable or appropriate remedy when such termination is stretched farther and farther to include unrelated or remote activities of distant affiliates.

[10/] For example, see Title IX, 20 U.S.C. Sec. 1682.

[11/] Sections 3(b)(1) and 5(b) of The Civil Rights Restoration Act of 1985.

[12/] "Noncompliance" is used rather than the term "discrimination" because an entity can be cited for noncompliance without ever having been found to have discriminated or, in fact, without discrimination having been alleged. Grove City College is an example.

The "which supports" language of the bill's funding termination provision is consistent with several other provisions of the bill in its ethereal, ambiguous, and undefined nature. However, because any federal assistance to part of an organization presumably enables that organization to shift resources to nonassisted programs, any federal funding could be viewed as "supporting" noncompliance, regardless of whether the discriminating operation received federal aid directly.

VI. The Law: Pre-Grove City

H.R. 700, in its "Findings of Congress" opening, states:

> legislative action is necessary to restore the prior *consistent* and *long-standing* executive branch interpretation and *broad*, *institution-wide* application of those laws as previously administered.[13]

However, the interpretations by the 28 federal executive agencies which extend federal financial assistance have neither been "consistent" nor "long-standing." Interpretations have, in fact, been highly *in*consistent and irregular, and the nature of these interpretations are in such a state of flux, that *no* principle is "long-standing."

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[13] The Civil Rights Restoration Act of 1985, Section 2(2) (emphasis added).

The assertion that executive branch interpretations have been "broad, institution-wide" is similarly misleading. Although some interpretations have been construed by the courts to provide for *institution-wide* coverage, the clear majority of court decisions can be characterized as *program-specific* in their interpretation of coverage and fund termination. Numerous federal courts have held that the nondiscrimination provisions of statutes covering federally-funded programs are *not* institution-wide in their application.[14]

Clearly, therefore, The Civil Rights Restoration Act of 1985 does *not* restore previous law at all but, in fact, goes far beyond: (1) the current law; (2) the consensus interpretation of the law prior to the *Grove City* decision; and, (3) the majority judicial determinations of congressional intent.

If the intent of Congress is to return the law to where it was pre-*Grove City*, H.R. 700 does *not* do it.

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[14] See *North Haven Board of Education v. Bell*, 456 U.S. 512 (1982); *Hillsdale College v. Department of Health Education and Welfare*, 696 F.2d 418 (6th Cir., 1982), vacated and remanded 104 S.Ct. 1673 (1984); *Dougherty County School System v. Bell*, 694 F.2d 78 (5th Cir., 1982); *Rice v. President and Fellows of Harvard College*, 663 F.2d 336 (1st Cir., 1981), *cert* denied, 456 U.S. 928 (1982); *University of Richmond v. Bell*, 543 F. Supp. 321 (E.D. Va., 1982); *Othen v. Ann Arbor School Board*, 507 F. Supp. 1376 (E.D. Mich., 1981), affirmed on other grounds, 699 F.2d 309 (6th Cir., 1983); *Simpson v. Reynolds Metals Co., Inc.*, 629 F.2d 1226 (7th Cir., 1980); *Brown v. Sibley*, 650 F.2d 260 (5th Cir., 1981); and *Bachman v. American Society of Clinical Pathologists*, 577 F.Supp. 1257 (D. N.J., 1983). Of course, the U.S. Supreme Court's pronouncement on this issue in the *Grove City* decision was to interpret such statutes' coverage and fund termination provisions program-specific.

VII. Other Major Business Concerns Regarding H.R. 700

(A) Policy Concerns Regarding "Big" Government

Although this statement has focused largely on the negative impacts of The Civil Rights Restoration Act of 1985 on the business community, the Chamber also is very cognizant of the bill's negative potential to impact on educational institutions, state and local governments, and private institutions of all types.

This bill represents a major leap in the wrong direction. It raises fundamental questions about the appropriate reach of the federal government, and whether federal financial power should be wielded as a coercive bludgeon in the name of "civil rights."

H.R. 700 is a big government response to a somewhat parochial and highly technical legal problem. Whatever the appropriate response the U.S. Supreme Court *should* have had to the *Grove City* case, this response is legislative overkill, an overreaction which conforms to the premise of those advocates whose solution to every perceived problem is more government, more regulation, more litigation, and more taxpayer dollars.

H.R. 700 represents a vehicle for massive government intrusion in private and public institutions.

(B) Policy Concerns Regarding Civil Rights

In many respects, H.R. 700 also represents a *threat* to institutional and individual civil rights and liberties -- ironically in light of the intentions of its proponents to protect civil rights.

Proponents may force promotion of the civil rights of some at the expense of intrusion into the civil rights of others. The interests at stake are compelling and multiple, and it is short-sighted to perceive a singular interest as controlling when to do so threatens the "rights" of those who wish to attend independent colleges, the integrity of private institutions,[15] the autonomy of religious organizations, or the economic viability of small businesses.

The debate over Grove City has, at times, under the sacrosant and irresistable banner of "civil rights," featured a very real intolerance of the many interests involved. As Jeremy Rabkin, an Assistant Professor of Government at Cornell University recently noted, Grove City legislation has gone "a long way toward transforming federal education aid from an engine of opportunity to an instrument of regimentation ...[16] (such legislation) poses grave dangers to tolerance and diversity."[17]

H.R. 700 would trample the rights of many in the name of preserving the rights of some.

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[15] Grove City College's "transgression," after all, was a desire to maintain its independence, not discrimination.

[16] "A 'Civil Rights' Snare," Jeremy Rabkin, New Perspectives, The U.S. Commission on Civil Rights, Winter, 1985, p.7.

[17] *Ibid*, p. 6.

(C) Businesses' Concern For Coverage of Educational Institutions

While the Chamber is especially concerned about the scope of application of these statutes to the business community, it also is concerned about how broad an impact Grove City legislation would have on educational entities. This concern is magnified by the fact that:

- Businesses are Educators -- Many employers are in the education "business" directly or indirectly, or have extensive educational or training programs for their employees, or share with academia funding, faculty, or facilities for such programs as management seminars or apprenticeship training;
- Schools are Businesses -- Many educational institutions are "businesses" in the full sense of the term. Furthermore, they may engage in noneducational "businesses" on campus, providing housing, book store, restaurant, laundry and other such services, or may run off-campus businesses as a function of their financial diversification; and
- Schools are Investors in Business -- Finally, many colleges and universities have sizeable endowments, monies from which are invested commonly in the private sector. Such investments might be considered a sufficient nexus to trigger additional civil rights coverage to the outside firms under H.R. 700.

To the extent that coverage of any or all of these relationships between business and educational institutions is not specifically delineated, the Chamber remains deeply concerned. Beyond direct coverage of businesses and coverage achieved through the catchall provisions of H.R. 700, the Chamber also is troubled by the potential for indirect coverage through H.R. 700's inclusion of educational institutions under its definition of "program or activity."

(D) Special Concerns about H.R. 700's Impact on Small Businesses

The Chamber is particularly concerned about what the implications of The Civil Rights Restoration Act of 1985 would be for small business. Nearly 90 percent of the Chamber's more than 180,000 members are small businesses employing 100 or fewer employees. To the extent that H.R. 700 has a catchy title, is superficially very appealing, and addresses very real -- and legitimate -- concerns with the Supreme Court's Grove City decision, its potential impact on business, particularly small business, may have been obscured. To subject small businesses to the regulatory excesses of such extensive requirements would be especially burdensome and unfair.

VIII. The Civil Rights Amendments of 1985

While the Chamber is convinced that The Civil Rights Restoration Act of 1985 is the wrong response to the Grove City decision, we are sympathetic to the premise that the Supreme Court's decision may have created potential inequities.

The Chamber therefore supports S. 272, The Civil Rights Amendments of 1985, introduced in January by Senators Robert Dole and Orrin Hatch and supported by the Reagan Administration. We feel S. 272 is an appropriate response to the Grove City decision. S. 272 would affect all four civil rights statutes addressed in H.R. 700 and would ensure that anti-discrimination coverage of educational institutions receiving federal funding would be institution-wide, not program-specific as is currently the law in the wake of the Grove City decision. S. 272 sets such limitations in a realistic and appropriate manner, so as not to overextend coverage, even under an institution-wide application.

The Chamber believes that S. 272 effectively reverses the Grove City decision without the overreach inherent in alternative "civil rights" proposals.

IX. Conclusion

The Supreme Court's Grove City College v. Bell decision could have inequitable ramifications. Toward this end, the U.S. Chamber of Commerce supports legislation which would provide for a simple reversal of this decision. We believe S. 272, the Dole-Administration bill, accomplishes this goal in a fair and appropriate manner.

The Civil Rights Restoration Act of 1985, however, is an inappropriate and unacceptable response to the Grove City decision.

The U.S. Chamber opposes H.R. 700/S. 431, The Civil Rights Restoration Act of 1985, and urges Congress not to enact this legislation.

The **Chairman**. The next witness is Mr. William Taylor, on behalf of the Center for National Policy Review and the Leadership Conference on Civil Rights.

Mr. Taylor.

STATEMENT OF WILLIAM TAYLOR, ON BEHALF OF THE CENTER FOR NATIONAL POLICY REVIEW AND THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Mr. **Taylor**. Thank you, Mr. Chairman.

As the Chairman said, I am here basically to respond to questions that may not have been covered fully in my testimony last week, and I don't wish to tread on the good will of this committee by making a lengthy opening statement.

I am not going to respond to the veritable blizzard of objections that we have heard from some of the witnesses over the past hour, but I would like to make three brief points about the types of criticisms that have been leveled against H.R. 700 and how I think they ought to be evaluated by the committee.

First, some of the criticisms that you have heard are based on a failure to understand the basic policy reasons underlying the distinction that has been made between broad coverage, on the one hand, and narrow or pinpointed termination, on the other hand, distinctions that were made until the *Grove City* case.

In the *Taylor County* v. *Finch* case, whose importance, I might say, is acknowledged by everybody on every side of this debate but which is misconstrued by the opponents, the Fifth Circuit said that the reason for pinpointing any termination of funds—and here I am quoting—"was not for the protection of the political entity whose funds might be cut off, but for the protection of the innocent beneficiaries of programs not tainted by prior discriminatory practices."

Now, these reasons for limiting fund termination in no way support a limitation on coverage.

Institution-wide coverage permits other remedies—for example, negotiated settlements, injunctions in suits that are brought either by private parties representing victims of discrimination or by the Justice Department—and those settlements or suits that result in injunctions terminate the discriminatory practice and not the flow of Federal funds.

In the case of those remedies there is no possible harm to an innocent beneficiary, since all that happens is a termination of the discrimination.

Now, Congress understood this, the agencies understood this, the courts understood it up until the *North Haven* and *Grove City* cases.

And what H.R. 700 does is to restore this and point this important distinction retaining, I might say, pinpointed termination of funds.

Now, second, some of the criticism is based either on a misunderstanding of how the four laws have operated over the years or on a failure to read carefully either those laws or H.R. 700 itself.

An example of the first kind of problem is in the suggestion that was made here by representatives of the Civil Rights Commission that in defining "program or activity"——

Ms. **Berry**. That is some representatives.

Mr. **Taylor**. Some representatives. I apologize to Ms. Berry. I will try to be more specific in my references in the future.

That H.R. 700 in some way alters the definition of the recipient.

Now, if you read these statutes, it is clear that there are two determinations to be made.

First, is someone, some entity a recipient of federal funds?

Second, if the answer to that question is yes, what is the scope of coverage of the recipient's operations?

The definition of "program or activity" in H.R. 700 relates only to the latter. If someone is not a recipient in the first place, then the second inquiry is not triggered.

In short, by way of example, a corporate farmer that received price supports is not a recipient now under the law and could not be made a recipient under the program or activity definition of H.R. 700.

An example of the latter kind of problem, of the failure to read the bill carefully, is, I think, illustrated by the discussion we have heard from Ms. Chavez about any other entities, which she said, if my notes are correct, was vague, open-ended and limitless in its application.

Well, it is clear, if you read the bill, that the definition of any other entities is limited by the principles established in the first three subsections. That is what it says precisely.

The alternative, we are not told what the alternative would be. I assume the alternative would be to try to list every type of entity that receives Federal funds, water districts, sewer districts, housing authorities, anything you could think of, and then to specify the coverage of each. That is not necessary. That is not really possible. If Congress undertook such an endeavor, it would inevitably leave out some kinds of entities and you would be faced with more questions of interpretation than you are faced with right now.

The notion that somehow this was put in here as a kind of sneak device to expand coverage is simply based on a misreading of the law.

Third, it is clear that some of the criticism is directed not at how well H.R. 700 restores coverage prior to *Grove City,* but at the failure of Congress in enacting these laws in the first place to carve out exemptions on behalf of special interests that would permit institutions to practice discrimination even while they were receiving Federal funds.

In this category is the claim by some fiercely independent colleges, as they style themselves, and the claim of Mr. Pendleton here today to exemption from nondiscrimination regulations when they receive only certain kinds of Federal assistance.

The fact of the matter is that the Congress was very careful in drawing exemptions in these laws, and it did so only when it thought that other values—for example, the interest in religious freedom—outweighed in that particular instance the national policy favoring equal opportunity and opposing discrimination that is subsidized with Federal funds.

And I would suggest to you, if you listen carefully to the testimony of some of the opponents of this legislation, you will hear very distinct echoes of the opposition to title VI in 1963 and to the statutes that succeeded it.

You will hear that the laws are an invasion of States' rights, that they are an invasion of rights of private property, and I would suggest to you that Congress has addressed these questions and ought not to address them again now.

By the same token, the real quarrel of some of the critics is not with the coverage of the law but with the substantive requirements of the laws themselves. And Mr. Jones was very frank in that statement.

This bill has nothing at all to do with the substantive requirements of the law, with affirmative action, with school desegregation remedies, with abortion, or with other matters.

And I might say parenthetically that the decision of the District Court here in the District of Columbia case this week was not a decision that invalidated race conscious action. In fact, the court specifically embraced the necessity for race conscious action. It merely said that one aspect of the plan, in the court's view, was an improper aspect of the plan.

But all of that to one side, this is not the forum for that. If people want to take on this issue, and obviously they do, we are ready to take it on in an appropriate forum, and this is not it.

I think, Mr. Chairman, that the proponents of this bill have an obligation to level with this committee and to say what their understanding of the bill is, what it would do, to answer your questions as fully and frankly as they can.

By the same token, I think the opponents have an obligation to level with this committee, as well, and I think if you listen to the testimony, what you have heard from Mr. Pendleton and Ms. Chavez is that they would not restore pre-*Grove City* coverage at all. Indeed, they would leave matters where they are, and then they would carve out some new exemptions to the law, exemptions that never existed before.

But I think people ought not, under the guise of saying this bill is overreaching, take on arguments in which they are saying that they don't like the laws themselves, but they are not acknowledging that very frankly.

In conclusion, Mr. Chairman, there is no doubt, I think, in anybody's mind that the simple justice that President Kennedy called for in asking for title VI's passage in 1963 has turned out to be quite complex.

I think the proponents, the sponsors of the bill and all of the members of the committee are to be commended for the way in which they have taken the matter seriously and grappled with the numerous technical issues with which you have been presented.

But at bottom, the issues remain one of simple justice, whether there is any set of values that overrides the national policy of equality of opportunity for all citizens and whether the Federal Government ought to be obstructed in the performance of its obligations to assure the taxpayers' money does not subsidize discrimination.

I think if viewed in those terms, the Congress will pass H.R. 700 without weakening amendments. We have come too far along the road to removing the debilitating effects of discrimination from the lives of people with the aid of these laws to turn back now.

Thank you very much.

The CHAIRMAN. Thank you.

[Prepared statement of William L. Taylor follows:]

PREPARED STATEMENT OF WILLIAM L. TAYLOR, ON BEHALF OF THE CENTER FOR NATIONAL POLICY REVIEW, CATHOLIC UNIVERSITY SCHOOL OF LAW AND THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Mr. Chairman and members of the Committees:

My name is William L. Taylor and I serve as director of the Center for National Policy Review, a civil rights research and advocacy group affiliated with Catholic University Law School. I appear here today on behalf of the Center and the Leadership Conference on Civil Rights, the coalition of 165 civil rights, labor, religious and civic organizations that has made enactment of the Civil Rights Restoration Act of 1985 (H.R. 700) its primary legislative objective this year.

In my testimony, I will draw on experience I have had over almost a quarter of a century with laws and policies designed to prevent discrimination in the use of federal funds. As General Counsel and Staff Director of the U. S. Commission on Civil Rights in the 1960s, I helped to document discriminatory practices by institutions that received federal funds and later worked with federal agencies charged with implementation of Title VI of the Civil Rights Act of 1964 in the development of their policies and regulations.

I appreciate both the opportunity to testify and the leadership that has been provided over the years by the chairmen and members of both committees in the protection of constitutional and civil rights.

My testimony today is for a limited purpose--responding to criticisms of H.R. 700 that have arisen since its introduction in the House on January 24, 1985. While I am prepared to state the positive case of H.R. 700, I know that in the course of your hearing here and around the country you have heard ample testimony about why the legislation is so vitally needed to assure the protections of law to people who still suffer discrimination. So, for purposes of this testimony, I will assume the positive case and go directly to the criticisms.

1. The distinction between coverage and termination.

Much of the criticism of H.R. 700 stems from the failure of the critics to make a crucial distinction between the broad institution-wide coverage provided for in Section 601 of the Civil Rights Act of 1964 and its counterpart statutes and the narrower reach of the termination of funds sanction provided for in Section 602 of the Act and other statutes.

Until (and in some cases after) the Supreme Court first addressed the question of program specificity in *North Haven Board of Education* v. *Bell*, 456 U.S. 512, in 1982, and then decided it in the *Grove City* case in 1984, the distinction was clear both in the administrative practice of federal departments and agencies charged with implementing the laws and in the decisions of those federal courts that considered the issue. See, e.g., *Iron Arrow Society* v. *Heckler*, 702 F.2d 549, 561 (5th Cir. 1983); *Haffer* v. *Temple University*, 688 F.2d 14 (3rd Cir. 1982); *Wright* v. *Columbia University*, 520 F.Supp. 789 (E.D. Pa. 1981); *Yakin* v. *University of Illinois*, 508 F.Supp. 848, 850 (N.D. Ill. 1981); *Flanagan* v. *President of Georgetown College*, 417 F.Supp. 377, 383 (D. D.C. 1976). In other cases, broad institution-wide coverage was simply assumed. For example, when the Supreme Court held in 1974, that the Department of Health, Education and Welfare had authority under Title VI to require school districts to address the language needs of foreign speaking students, the Court did not suggest in any way that these language needs must be addressed only in those "programs" of a school system that received federal assistance. See, Lau v. Nichols, 414 U.S. 563.

It was only after the Court suggested in dicta in North Haven an identity of construction between the coverage and termination sections of Title IX that some federal courts began narrowly construing the coverage provisions of the statutes. See, e.g., Hillsdale College v. HEW, 696 F.2d 418 (6th Cir. 1982). It is of course the confusion created by North Haven which led to the restrictive Grove City result that H.R. 700 is designed to dispel.

That this confusion still exists in the minds of some critics of H.R. 700 is evident by their reliance on Board of Public Instruction of Taylor County v. Finch, 414 F.2d 1068 (5th Cir. 1969) as a case supporting the concept of narrow coverage. Taylor County most definitely stands for the proposition that fund termination must be narrow and pinpointed to the funds which support discrimination. Equally as definitely, Taylor County stands for the proposition that coverage under the laws is broad. In explaining the reasons for this distinction, the Court noted that the limitation on fund termination in Section

602 "was not for the protection of the political entity whose funds might be cut off, but for the protection of the innocent beneficiaries of programs not tainted by discriminatory practices." 414 F.2d 1075.

These reasons for limiting fund termination in no way support a limitation in coverage. Institution-wide coverage permits other remedies such as negotiated settlements or injunctions (in suits brought by victims of discrimination or the Department of Justice) that would terminate the discriminatory practice, not the flow of federal funds. In the case of such remedies, there is no possible harm to "innocent beneficiaries." Accordingly, the distinction made between broad coverage and narrow termination is supported not simply by legislative history and prior administrative and judicial practice, but by sound reasoning and sensible policy as well. As the Third Circuit concluded in NAACP v. Wilmington Medical Center:

> ...[T]o the extent that these procedures [§602] stand as a limitation, they limit only the power of agencies [to defund], and they in no way undermine the breadth of the underlying principle of non-discrimination. (Citing Senators Case and Kuchel, 110 Cong. Rec. at 5254, 6562). To read [§602] as a limitation on the very rights that are protected by the previous section would violate this principle [of complementary and harmonious interpretation of statutory provisions], and would also traduce elementary canons of logic (citation omitted). 559 F.2d 1247, 1254 and n. 27 (1979).

The question remains whether H.R. 700 is drafted precisely enough to retain pinpointed fund termination while restoring institution-wide coverage. Some critics have claimed that the substitution in H.R. 700 of the words "assistance which supports" for the language about "program or part thereof" in the termination sections of the original statutes would somehow broaden the reach of the termination sanction. To the contrary, the effect of this change is to avoid confusion about the meaning of the term "program" which could lead to a more *expansive* definition of fund termination. The language in H.R. 700 is almost identical to that used in H.R. 5490 last year, language which received a narrow interpretation in the House report and in statements made by Senate sponsors. It is language taken directly from *Taylor County* v. *Finch*. (414 F.2d at 1078).

So, in the words of Senator Cranston on S. 431 (the Senate counterpart to H.R. 700) "[t]he statutory scheme would thus retain the basic concept of 'pinpointing', that is, limiting the termination of funds to those funds which have a specific nexus to the discrimination that is found." Cong. Rec., Feb. 7, 1985 at S. 1307.

2. Corporate coverage under H.R. 700.

Other criticisms of H.R. 700 have been leveled at the bill's definitions of the concept of "institution-wide" coverage. Whereas last year, it was said by some that H.R. 5490 was not specific enough, this year some of the same critics are saying that H.R. 700 is too specific, and in ways they do not like.

In this connection, particular attention has been focused on Section 3(a) and other sections which state that "the term 'program or activity' means all of the operations of - (3) a corporation, partnership, or other private organization...any part of which is extended Federal financial assistance."

Critics of this provision say variously that this does not conform to their understanding of prior law, that coverage of corporations does not appear to be limited in the same way that coverage of state and local governments is (to the department or agency receiving funds), that some corporations receive very limited federal assistance (e.g., only grants under the Job Training and Partnership Act) and would be prepared to give up those grants rather than conform to onerous civil rights requirements.

First, as to prior coverage, it is true that the question of corporate coverage has not received the extensive attention in case law that has been given to other types of institutions, e.g., public school systems. The reason for this is that, by and large, problems of discrimination in the corporate area are employment problems rather than discrimination in the extension of services. In employment, both limitations in the provisions of some of the federal funding statutes (e.g., §604 which limits Title VI coverage of employment to federal programs where employment is a "primary objective") and the availability of other remedies such as Title VII of the 1964 Act and Executive Order 11246 dealing with government contractors, has meant that there has not been extensive application of the federal funding statutes.

Nevertheless, cases that have addressed the issue directly or indirectly support the concept of corporate-wide coverage. See Organization of Minority Vendors v. Illinois Gulf Central Railroad, 579 F.Supp. 574 (N.D. Ill. 1983); Marable v. Alabama Mental Health Board, 297 F.Supp. 291, 298 (M.D. Ala. 1969). Conversely, cases that appear to go the other way are predicated on a view that Section 504 of the Rehabilitation Act of 1973 does not cover employment at all, a view repudiated by the Supreme Court in Consolidated Rail Corporation v. Darrone, 104 S.Ct. 1248 (1984).

Further, in one area where there have been significant problems of service discrimination--hospitals and health facilities--it is my understanding that prior administrative practice has not made any distinction between public and private corporate bodies. In both situations, corporations are covered in their entirety. See NAACP v. Wilmington Medical Center, supra.

Second, I believe that the provision for corporate-wide coverage is supported by experience in analogous areas of law as well as by sound policy considerations.

As this Committee knows, Executive Order 11246 is corporate-wide in its coverage. Even if only one plant or facility of a corporation with operations all over the nation receives a federal contrast, all of the operations of the corporation are subject to the requirements of the Order.

Similarly, if a private hospital corporation owns health facilities around the nation it is very difficult to understand why only the facility that receives federal assistance should be required to meet the basic requirement of treating patients in a nondiscriminatory manner.

In fact, I do not know of any well-run corporation that would want to have two sets of policies--one which requires equal opportunity at its facilities that receive federal assistance and another which permits discrimination at its facilities which do not receive such assistance.

If it is proposed that a distinction be made not between physically separate plants or facilities but between the varying functions of a single corporaiton, the arguments against parsing corporate-wide coverage seem to me to be at least equally compelling. Just as a private college that receives student assistance in its finance office should not be free to discriminate in its math department, so a private corporation that receives aid in its geriatrics department should not be free to discriminate in its operating rooms or its pediatrics department.

Third, while analogies in this area are necessarily imprecise, it is not correct to say that private businesses are being subjected to broader or more onerous regulation than state or local governments.

It should be noted that many major business enterprises in this country are conducted through a multiplicity of corporations. H.R. 700 is no way seeks to treat such an enterprise as a unity. Even where a corporation is a wholly-owned subsidiary of another corporation, or has interlocking boards of directors or other indicia of control, H.R. 700 does not reach beyond the formal boundaries of the corporation that is receiving federal assistance.

Nor to my knowledge has anyone made a persuasive argument about why, when a public school system or a large university with multiple sites and facilities should be treated as a unity, a corporation with multiple sites and facilities should not.

Fourth, the claim that some corporations would forego federal assistance rather than subject themselves to additional civil rights requirements is not a new one. Even since Title VI was first proposed in the early 1960s it has been said that insistence on attaching civil rights requirements to federal grants would resultin harm to the very people whom the law was intended to benefit--the poor and disadvantaged. Experience has proved this contention wrong. The progress we have seen in education, health, housing and many other areas over the past twenty years has come because in the end recipients of federal funds have accepted both the funds and the obligation to treat people fairly. It is hard for me to believe that in 1985, corporations concerned abut the need for fuller devlopment of human resources or ways to improve productivity would refuse to participate in programs designed to achieve such goals because they are required to treat people fairly and without discrimination. It is also incorrect to say that the bureaucratic obligations under Title VI, Title IX, Section 504 and the Age Discrimination Act are onerous. The assurances of compliance and periodic reports that are called for under agency regulations are far less burdensome than those of other statutes or executive policies, e.g., the goals and timetable requirements of Executive Order 11246 which call for corporate self-analyses and the preparation of very detailed afirmative action plans.

If, as has been suggested, the problem lies in multiple investigations by different federal agencies of a corporation based on the same underlying complaint, it seems to me that the answer lies not in restricting coverage but in clamping down on bureaucratic malpractice. Civil rights groups do not want to see corporations harrassed or scarce federal resources for civil rights enforcement wasted. We would be glad to cooperate with members of this Committee and representatives of the business community in seeking an end to any duplication in enforcement that can be identified.

Finally, one largely unarticulated area of concern on the part of corporations is the obligation they would have under Section 504 not to discriminate throughout their operations on the basis of handicap. Here, the concern is not about duplication since there are few other laws barring discrimination against disabled people, and corporations are not forbidden under federal statutes from discriminating against disabled people unless the corporations are federal contractors or receive federal assistance. Rather, the problem is that some businesses are concerned about the costs that would be entailed in coming into compliance with the law, costs they have not assumed so far if they believe themselves to be exempt in part of their operations. This Committee has heard and will hear testimony from people far more expert than I on legal issues affecting disabled people. I would say only that in requiring only that "reasonable accommodation" be made in providing employment and accessible services, Congress and the Executive Branch have been sensitive to the need to avoid undue costs in the extension of rights. There have been few complaints on the part of institutions such as colleges that acknowledge they are fully covered that the law has been administered in a draconian way. If there are such problems, I would suggest that the way to resolve them is in revisions of substantive regulations regarding reasonable accommodation, rather than arbitrary exemptions from coverage. Ultimately, the nation will benefit by policies which permit disabled people, as well as minorities, women and older Americans to develop their talents and contribute to their full potential.

3. Other objections to H.R. 700.

Several witnesses in these hearings have addressed or will address their testimony to other objections that have been raised to H.R. 700. So I will not deal with these issues unless requested by the Committee to do so. I would observe, however, that if the Committee reviews these criticisms it will find that many of them are directed not to the amendments designed to restore the four statutes to pre-*Grove City* status but to the very basis of the laws themselves.

In the arguments against department or agency-wide coverage of assistance to state and local governments can be heard echoes of the "states' rights" claims that were made against passage of Title VI in 1964.[1] In arguments that exemptions not currently contained in any of the four laws should be carved out for "fiercely independent colleges" or other private institutions can be heard echoes of the "private property" rights claims that were made against the 1964 Act. The short answer should be that institutions that so value their independence should abstain from any reliance on federal funds. In a real sense, some opponents are seeking to convert the debate about the Civil Rights Restoration Act into a referendum about the desirability of the laws themselves. While civil rights groups have not sought such a referendum, we are confident that Congress if called upon will ratify the wisdom of the decisions it has made since 1964 in passing the laws.

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[1] One example is the testimony of Assistant Attorney General Reynolds that such coverage:

> [O]pens the way for the first time for a nonfunded activity of a state agency in Northern California, for example, to be subject to federal compliance reviews of some other, unknown and wholly unrelated, funded activity of that same state agency that is going on in Southern California. Reynolds testimony at 9-10.

This statement is factually incorrect and exhibits a peculiar understanding of the role of states in our federal system. Indeed it appears to go beyond an assertion of states' rights to plead for "bureau" or "office rights." Or perhaps Mr. Reynolds is merely reviving the old proposal that California be split into two states.

Conclusion

Mr. Chairman, there can be no doubt that the "simple justice" that President Kennedy asked in 1963 in calling for passage of Title VI has become quite complex. The Committees are to be commended for grappling with the numerous technical issues presented to them. But, at bottom the issue remains one of simple justice--whether any other set of values overrides the national policy of equality of opportunity for all citizens and whether the federal government should be obstructed in the performance of its obligation to assure that taxpayers' money does not subsidize discrimination.

If viewed in these terms, I am optimistic that Congress will pass H.R. 700 without weakening amendments. We have come too far along the road toward removing the debilitating effects of discrimination from the lives of people to turn back now.

The CHAIRMAN. The final witness is Mr. Lowell Johnston, of the NAACP Legal Defense Fund.

STATEMENT OF LOWELL JOHNSTON, NAACP LEGAL DEFENSE FUND, INC.

Mr. JOHNSTON. Thank you very much, Mr. Chairman. I am going to be very brief.

We have not submitted written comments, in part because we are fully in accord with the statements that have been prepared by the Leadership Conference and by Mr. Taylor of the Center at Catholic University, and we join in those comments, and we understand that they will be supplemented within the next few days.

It is hard for me—this is my first opportunity to appear before a committee such as this, and it is really hard for me to understand the kinds of extremes in the statements that are being made about this particular bill and about things in general.

I had particular trouble understanding the threat that has been described by Mr. de Bernardo to the business community.

But in any event, what I would like to emphasize, and I will be very brief, is that I think what is at stake here is not so much the right that is guaranteed by title VI, for example, in this legislation, although there is no gainsaying the importance of it, what we are talking about here is an essential enforcement tool that was designed early in the days of the civil rights movement to accomplish the rights that were described in the Constitution.

That is, there is really a three part system to the enforcement of these rights.

You have the private sector that can enforce title VII, title VI to a certain extent, although that is still in dispute, the Civil Rights Act of 1866, numerous private rights. Private rights of actions exist under the Constitution to enforce those rights.

Second, you have the systems with the 1964 act that authorizes action by the Attorney General, and up until the present administration there is no estimating the real impact that those efforts had.

The third part, and this is what is most critical of all, is the enforcement machinery that was set up under title VI that is sought to be restored through this legislation.

It would have been impossible, it would have been impossible for the extensive, for example, school desegregation or desegregation at the level of higher education to have been accomplished without the efforts of the Federal bureaucracy in that effort.

The Justice Department could not have done it, the private sector could not have done it, groups like ours, private attorneys working the area could not have accomplished it. Those things would not have been accomplished.

There is a whole new generation of issues that have to be addressed in education, in housing, which has not really been addressed at all over the past 20 years, and numerous other areas.

Taking an example, there was recently an article, a series of articles in the Dallas newspapers about the extent of federally subsidized housing segregation throughout the country.

Now, if this legislation does not pass, for example, if we identify a problem of segregation in public housing in Albuquerque, NM, and file a complaint under title VI, with the restrictive interpretation we are talking about here only that complaint would be investigated. Only the particular facility that you are trying to address, that the individual is trying to address in that complaint would be reviewed by the agency.

There would not be the across-the-board investigation into housing discrimination which was identified as being important by Edith Green at the time this title VI was first passed.

That essentially eviscerates the effectiveness of the statute. It removes an essential remedy to something like housing discrimination. It makes it impossible to make that kind of a dream come true for an individual in New Mexico.

There can be countless examples of things like that that would happen in the absense of some across-the-board approach involving the Federal Government in trying to address these problems.

Thank you very much.

The CHAIRMAN. Thank you.

This hearing is the concluding one in a series of hearings that we have had, both here in Washington and across the country, and it would seem to the Chair that after listening to all of the testimony that what is actually involved here is the 1964 Civil Rights Act. Some individuals accuse the sponsors of H.R. 700 of overextending the reach of the law beyond pre-*Grove City,* when in actuality they seem to be appearing in opposition to the 1964 Civil Rights Act which they apparently objected to, then and now, and rather would like to preserve the right to discriminate by those entities receiving Federal assistance, which after all, is what H.R. 700, is designed to prevent.

I would think that their support of the Dole bill is one of the most dangerous situations in which they could find themselves. This Congress, if it sought merely to confine the interpretation to educational activities, would undercut completely all of the other statutes contained in H.R. 700, and perhaps even in the educational field itself.

I can perhaps understand the chamber of commerce, because I think they are forthright in their position in that they also opposed the 1964 act, and all of the acts subsequent to that, including the 1972 amendment; which I recall rather vividly because I was heavily involved in that particular activity as a member of the Education and Labor Committee.

So, their opposition has been consistent, and perhaps from the point of view of doing everything possible to protect against additional paperwork, I suppose on that basis alone you might say that there is some rationalization.

However, I find the rationalizations of the Civil Rights Commission, and its members, who pledge to uphold the civil rights policies of the Nation as conceived under both Republican and Democratic administrations, very hard to understand, and it is frightening that such an agency would object to this simple restoration and use, in my opinion, the most horrible examples that are clearly very difficult to even conceive of, used to rationalize their opposition.

Mr. Pendleton, in your statement, on page 4, you refer to several examples where you suggest that, for example, enrolling students in educational institutions who themselves receive Federal student aid should not, in a sense, taint the university in such a way as to invoke coverage of these laws. You also refer to coverage of supermarkets.

Now, in both instances, current law and regulations, do cover them. Let's take the example of student aid to a university, or even the *Grove City* case, itself. The court in *Grove City* was not troubled by this initial coverage question, whereas you seem to be troubled, by the fact, that enrolling those students in those institutions would trigger coverage under H.R. 700.

Is that the position that you take in behalf of the Civil Rights Commission?

Mr. PENDLETON. Well, I understand from your preliminary remarks how you could grab that position, remarks about us upholding the civil rights laws. I just want to say in the beginning, we are upholding the civil rights laws and will do so.

The CHAIRMAN. Now, I am talking about a statement from your statement.

Mr. PENDLETON. I am coming now to the statement. The point I am making here is that we have no problem with the broad coverage. What we are talking about is if you don't receive any money—I think since *Grove City* has been decided, institutions have given up on Pell grants and given up, for that matter, on guaranteed student loans.

So, in a sense, *Grove City* really isn't a problem anymore. They have decided to just abdicate out of the whole arena.

And what we are saying here is that there is broad coverage of the institutions, as we have said before, and to keep the laws as they are to pinpoint the coverage.

Where we did have some discussion in our statement with respect to the indirect aid that a school gets, and we were talking about the fact if someone gets indirect aid and gets that from someone else and uses that for a particular purpose, then we have some problem with that, and I think that is what we are talking about in that statement on page 4.

The CHAIRMAN. What distinction do you make between direct and indirect, and what is the explanation for your statement that enrolling students who receive Federal student aid should not federalize the institution? That seems to be the issue that you are dealing with.

Mr. PENDLETON. What I am saying is that if the student gets a guaranteed student loan that is not supplied by the institution, we don't really see the need to cover that—

The CHAIRMAN. Well, let's say the student receives a Pell grant or BEOG aid, which was precisely the *Grove City* situation. Do you believe the institution should be covered institution-wide?

Mr. PENDLETON. No.

The CHAIRMAN. Well, I thought that was your impression.

Mr. PENDLETON. Institution-wide in terms of coverage, we——

The CHAIRMAN. Do you think it should be confined specifically to that part of the institution that directly receives the grant, and, in that instance, only the Federal aid office?

Mr. PENDLETON. Yes.

The CHAIRMAN. Well, let me ask you another question, since you have been so candid. Your candor has really placed you on a path of a very restrictive interpretation, and also placed the Commission in a position of disagreeing with even the court in the *Grove City* case.

You would then, I assume, tolerate, discrimination against female athletes of an educational institution so long as the Federal assistance went only to the science department, or would sanction a hospital's policy of not treating blacks and Hispanics in its emergency facility so long as the aid went only to its cancer research activity?

Mr. PENDLETON. I think it is clear that there are other statutes that begin to cover that. I think——

The CHAIRMAN. That is not the question.

Mr. PENDLETON. Maybe I don't understand your question, sir.

The CHAIRMAN. I am asking you, and I will repeat it specifically: Would you tolerate discrimination against female athletes of an educational institution so long as the Federal assistance went only to the science department, or a hospital's policy of not treating blacks and Hispanics in its emergency facility so long as the aid went only to its cancer research activity?

Mr. PENDLETON. Well, certainly I don't tolerate discrimination, but I think the way you put the question limits, in a sense, the answer to this point, that there are other statutes that begin to cover that, and I think that if you don't receive the financial aid directly, I think I am being consistent about the coverage. But I don't tolerate discrimination in this case.

What I am really saying is that there are other ways to cover that, and I think we have said that in our testimony.

The CHAIRMAN. Well, you are not really answering the question. Let me ask another member of the Commission the same question with respect to whether or not the Civil Rights Commission's view is that of Mr. Pendleton or that of Ms. Berry? I think that is fair enough.

Ms. BERRY. Well, the majority view is that of Mr. Pendleton, since 5 to 3 they voted in favor of his position which, as you point out, is narrower than even the Supreme Court decision, which is why Commissioners Guess, Ramirez and I dissented.

But what I wanted to point out, Mr. Chairman, the Chairman of the Commission said that there is another statute that covers the situation involving students.

Commissioners Guess, Ramirez and I are not aware of any statute and I am not aware, based on my enforcement in these agencies, I am not aware of any other study, which is why I think the Congress passed the statute which passed this particular one.

But I would be interested in knowing what that statute is, Mr. Chairman.

The CHAIRMAN. Well, whether there is one or not, the question before us is, does the Civil Rights Commission favor the law post-*Grove City,* or whether it upholds the pre-*Grove City* view of the Civil Rights Act of 1964? I think that goes to the heart of the problem before us; whether they believe that an entity which receives

Federal assistance in only one of its parts, should permit the rest of the entity to discriminate.

Now, if that is the position of the Civil Rights Commission today, then God save the country. I cannot really get to the bottom of this question because there seems to be some indecision.

However, the same Commission members are quick to say that H.R. 700 overreaches and attempts to do something which is contrary to what the law and the regulations were pre-*Grove City*.

Mr. TAYLOR. Mr. Chairman.

The CHAIRMAN. Mr. Taylor.

Mr. TAYLOR. If I might just add, there is no other statute that prevents discrimination on the basis of sex in athletic programs in colleges and universities that receive Federal funds. There is no other statute that prevents discrimination against disabled people by corporations that receive Federal assistance unless those corporations happen to be Federal contractors.

So, I don't think that witnesses can stand here and tell you today that you don't need to reform these laws because there are other statutes that take care of the problem.

The CHAIRMAN. Well, I was hoping that Mr. Pendleton might reveal those other statutes.

Mr. PENDLETON. Let me be clear, what we are saying in our statement, and I understand why there is so much confusion—when you mentioned about hospitals and hospitals receiving research grants, surely they have some statutes that cover that research grant. There is no problem with that. You mentioned about cancer research.

What we are saying in this statement is that the institutions should receive broad coverage but pinpoint the cutoff of the money. We never said there shouldn't be broad coverage. Isn't that what I said?

Ms. BERRY. Mr. Chairman, the——

The CHAIRMAN. That is not what your statement says, Mr. Pendleton.

Mr. PENDLETON. Unless it was indirect aid, Mr. Chairman, I am sorry.

The CHAIRMAN. We will let your statement stand the way it is, because I think it shows really what the problem is all about

Mr. PENDLETON. Mr. Chairman, I have been very unclear here. Let me be as clear as I possibly can with this statement and try to get myself out of this hole that I put myself in, because I am really in it.

What the——

The CHAIRMAN. Well, just tell us the truth about the Civil Rights Commission.

Mr. PENDLETON. We believe what we said. We believe there should be broad coverage in this instance, as we talked about before, but there should be pinpointing of the remedy.

Ms. BERRY. No, it says coverage.

The CHAIRMAN. Well, that part is OK.

Mr. PENDLETON. Except for the indirect aid, that is all we really said.

The CHAIRMAN. Now, what do you mean by indirect aid? Will you describe what you mean by indirect aid? Do you mean a Pell grant, for example? Is that covered?

Mr. PENDLETON. That is not indirect aid, sir.

The CHAIRMAN. Is a BEOG grant?

Mr. PENDLETON. No, sir.

The CHAIRMAN. That is not indirect? That is direct aid?

Mr. PENDLETON. That is direct aid.

The CHAIRMAN. So that your statement, then, was misleading when you said——

Mr. PENDLETON. The indirect aid we are talking about like the guaranteed student——

The CHAIRMAN. That entities should not be federalized by enrolling students who themselves have received Federal student aid, that exempts all these other——

Mr. PENDLETON. We are really talking, sir, about private institutions, we are talking about the broad coverage, we are talking about pinpointing the remedy, and we are talking about indirect aid in this case, that that should not be a part of this. That is all we are really saying.

The CHAIRMAN. Well, you are almost agreeing with H.R. 700, then.

Mr. PENDLETON. Well, I am not so sure that I am, sir.

Ms. BERRY. Mr. Chairman, may I say that Commissioners Ramirez and Guess and I dissented from the Commission's statement which was voted on and approved on March 5, 1985, and which has been entered here for the record, and which was the subject of the Chairman's testimony that you have just been reading from, and that statement, passed by the majority of the Commission, and we dissented from it, says, in our view a private institution seeking and receiving direct Federal financial assistance should be covered only in the program or activity that actually receives and uses such assistance. That is what it says.

We hold this view for the same reason we object to any coverage of so-called indirect Federal aid. Now, that statement is there and we, in fact—and then it goes on to say, therefore, those parts of a private entity not receiving Federal aid should not be federalized by broad coverage under these Federal civil rights statutes.

Now, that is a statement that we dissented from, and on the plain language of the statement, Mr. Chairman, which has been entered in the record, what you see is an acknowledgement that receiving Federal funds in one program or activity does not provide for coverage, which is less than what the Supreme Court said in *Grove City*. That is what I dissented from.

The CHAIRMAN. Well, that statement seems to be in conflict with what Mr. Pendleton has said this afternoon, and that is the reason why I was trying to clarify it for the record.

Mr. PENDLETON. I think, Mr. Chairman, you have done a good job of clarifying it for the record. I am only saying that when we talk on page 5 about the Commission believes that there should be differentiation between a public and private entity with respect to scope of coverage issues, we were very clear about that, and I stand by that statement, sir.

The CHAIRMAN. Well, do you deny the statements you made this afternoon and stand by this statement?

Mr. PENDLETON. I stand by this statement, sir, that I read this afternoon.

The CHAIRMAN. All right. Mr. Bartlett.

Mr. BARTLETT. Thank you, Mr. Chairman.

I have questions for several of you. First, for the Chamber of Commerce.

I wonder if you could tell us precisely, in the area of coverage of a corporation, partnership or similar entity that would be covered by this, which was the subject of some of your testimony. Do you support a law, whether it is this one or existing law or a change in the law, in which that particular program would be covered by these four statutes, the program that is the recipient of that Federal aid? Is that what you are telling us that you support, that that recipient would be subject to the pinpoint remedy, so that recipients are covered by this and would have those funds eliminated if they discriminate? And the dispute is where you would draw the line around the termination?

Mr. DE BERNARDO. That is absolutely right.

Mr. BARTLETT. How would you construct a change to H.R. 700 in drawing that line?

Mr. DE BERNARDO. Well, our concern in terms of the scope of coverage is exactly how broad this is. We don't think that there are parameters set at all.

In terms of "recipient", which is something that some of the sponsors of this legislation have talked about, that recipient, the definition of "recipient" goes unaltered, we feel that the issue of what recipient is would be moot in lieu of section 909 of H.R. 700.

And, in fact, when you talk about all of the operations of, any part of which is extended Federal financial assistance within section 909, that in fact is the definition of "program or activity." In fact, what you have is the definition of "recipient" that goes through paragraph 1 through 4.

Now, there are several ways that corporations can be brought in. One is under paragraph 3. Another is under what we consider to be a very broad catchall paragraph, paragraph 4.

I am not sure exactly where to draw the lines on——

Mr. BARTLETT. Let me ask you in layman's terms.

Mr. DE BERNARDO. OK.

Mr. BARTLETT. And then I believe I will probably ask Mr. Taylor this same question, as to his opinion.

If a corporation—and let's take a large one, General Motors—has a plant somewhere in the country and that plant has a JTPA, a Job Training Partnership Act contract with the Department of Labor, you are contending that this bill, the way it is drafted, H.R. 700, would trigger corporationwide coverage for the entirety of the corporation, and you are opposed to that. Is that——

Mr. DE BERNARDO. That is absolutely right, and I think that is certainly an interpretation that this provision lends itself to.

Mr. BARTLETT. Would you be in favor of drafting a bill that would cover that plant, then, so if that plant were to discriminate, then the remedy would be the elimination of the JTPA funds from that plant?

Mr. de Bernardo. That is correct. In fact, I think that in terms of a program-specific application, that is what we are looking at getting at.

Mr. Bartlett. So, the Chamber would favor a pinpoint remedy, to use the terms that are in the existing law?

Mr. de Bernardo. That is correct.

Mr. Bartlett. So, you are not urging us to eliminate the antidiscrimination laws from coverage or from remedy, but merely to make them apply to the unit that is receiving the funds. I don't want to characterize you, but that is what I hear you saying.

Mr. de Bernardo. That is correct.

Mr. Bartlett. Mr. Taylor, where would you draw that line? Would you leave it as corporatewide coverage and therefore remedy, or would you draw it more narrowly than that?

Mr. Taylor. Well, Mr. Bartlett, first of all, I think at the risk of sounding stuck on a small point, really what we are talking about is not pinpointing remedy, what we are talking about here is pinpointing coverage rather than remedy, because the remedy is always pinpointed, if you talk about termination of funds.

I think that it is appropriate in terms of past practice and analogous experience to cover the corporation in its entirety.

I want to make clear that some of the interpretations we have heard, which suggest that if you have a business enterprise that has multi corporations it could be covered under the "any other entity" section, that is simply wrong.

The boundary of coverage would be the corporation itself.

And I would suggest that it would be very difficult to draw distinctions based on plant or facility or the differing kinds of operations within a corporation.

For example, and I have used this—I know this may not be the one you have in mind—but if you are talking about a private hospital corporation, for example, how is it appropriate to say that if the funds go into the emergency room or let's say they go into the geriatrics department, that somehow the pediatrics department or the emergency room should be exempt from coverage?

If you are talking about a corporation which we have seen the growth of recently, which provides hospital care and has facilities around the country, why is it appropriate to say that that corporation is covered if in Louisville it accepts funds but it is not covered in its New York or Boston operation?

I don't know of any well regulated company that would have two sets of practices, one of allowing discrimination in facilities that are not receiving Federal funds——

Mr. Bartlett. Well, Mr. Taylor, I understand the coverage. Then where would you place the remedy? Under the old statute or the existing statute, as I read it, it uses the words, "the remedy shall be limited in its effect to the particular program or part thereof."

Now, that is changed, as I read page 4 of H.R. 700, line 4, by striking "program or part thereof" and inserting in lieu, "assistance which supports."

What is your understanding of what that change does? Does that mean that then the remedy is corporatewide?

Mr. Taylor. No, no, not at all.

Mr. **Bartlett**. How would you define where the remedy should be?

Mr. **Taylor**. That retains the pinpointed remedy. And I am sorry, I thought you were addressing yourself to questions of coverage, rather than remedy.

Mr. **Bartlett**. I was and I shifted over at your suggestion.

Mr. **Taylor**. The reason for that language is that it is necessary to—now having given a definition to "program or activity" in the first section of the bill, it is necessary to make sure that the remedy will be—that the termination remedy will be pinpointed.

And the language, "assistance which supports," is drawn directly from the *Taylor County* v. *Finch* case, which says that under the law as it has been that any termination of funds must be limited to the assistance which supports discrimination.

So, I think that this language is useful, indeed necessary to retain pinpointed termination.

Mr. **Bartlett**. So, you advocate and you believe H.R. 700 advocates codification of *Taylor* v. *Finch* with regard to pinpoint remedy?

Mr. **Taylor**. That is absolutely correct, sir. And in the example that you gave, the only funding that would be at risk—let's say there were two kinds of funding—would be the JTPA funds in the plant that was supporting—where there were discriminatory activities found.

That would be the only funding at risk.

Mr. **Bartlett**. Under H.R. 700, the way you read it, if the rest of the company discriminates somewhere else, then the funding at that plant would not be allowed to be terminated. Is that your interpretation?

Mr. **Taylor**. That is correct.

Mr. **Bartlett**. Ms. Berry, is that your interpretation?

Ms. **Berry**. That is absolutely my interpretation. That is the policy that was followed in enforcing these laws while I was in the agency that enforced them. I understand the pinpoint termination remedy entirely, and the only funds that would be cut off under the example you gave is at that plant.

Mr. **Bartlett**. I am not sure if I read it precisely that way and I may want to hear some more. Ms. Chavez, do you read it that way? It seems to me that that comes down to the heart of what the dispute is about. It is over words and what the words mean. Ms. Chavez?

Ms. **Chavez**. No; I do not read it that way, and as a matter of fact that is one of the ways in which I believe this bill does expand coverage, is in the expansion of the former pinpointing of fund termination.

The pinpointing of fund termination was not affected by the *Grove City* decision. It was not part of that decision nor was it affected.

Once the Congress changes the language in the statute and no longer specifically mentions program or activity and fund termination based on pinpointing that to the program or activity, I think you will leave the door open for future courts to decide that Congress did indeed intend to expand coverage.

If Congress does not intend to expand coverage, then the language in the fund termination section should remain unchanged, since it was unaffected by the court decision.

Mr. TAYLOR. May I point out, Mr. Bartlett, the issue we are discussing, the issue on which you asked the question was not about coverage. It was about termination sanctions specifically. And my answer was directed to that, it retains pinpointing.

Ms. BERRY. And might I just add, Mr. Bartlett, that the language which is in the bill which circumscribes the termination to pinpointing is taken exactly from the case, *Taylor County* v. *Finch,* which is the case which defined what pinpoint termination is.

It doesn't seem to me that—I don't see how one needs to be clearer about that, unless you want to write in the bill, this language is taken from *Taylor County* v. *Finch.*

Mr. BARTLETT. Maybe we will have to do that, Ms. Berry.

Ms. BERRY. Perhaps that will be necessary.

Mr. BARTLETT. Thank you. Mr. Chairman.

Mr. EDWARDS. I would like to make it clear that the report will be very specific about that rule, that we all understand very clearly, and there is no doubt that that is what the intention of the writers of this legislation is.

We will recess for 10 minutes because there is a vote on the floor of the House.

[Recess.]

The CHAIRMAN. Mr. Armey, we will yield to you.

Mr. ARMEY. Thank you, Mr. Chairman.

I would like to preface my question with a brief statement, because it is indeed a pleasure today to see this panel of witnesses. I have worked with a great many people regarding this act and I want to say up front that these are people like myself who believe that, indeed, all Americans are entitled to the protection of the law, and that a fundamental tenet of human justice in the United States is that a person is considered innocent until proven guilty. They are concerned about this law because the law extends the scope of meddlesome bureaucracy to have an open license to meddle into their life and ask them, first, to fill out compliance forms that testify to their innocence before they are even charged, and second, to be subject to the fear and the threat of harassment by bureaucratic agencies if indeed somebody in some related agency or program or activity, sometimes clear across the Nation or across the State, should fail to fill out compliance agreements.

They often see this as what I call the Comprehensive Government Intrusion Act of 1985, and in defense of their own individual liberty do in fact rise in opposition against it.

It is not that they are mean spirited, not that they intend to discriminate nor would tolerate discrimination.

Now, what I would like to point out is that as we look at this, we see a law that would extend the right of the Government to make a certain violation of everybody's rights in defense of the possible violation of somebody's rights, and we quite rightly oppose this.

Now, I would like to ask the members of the panel, beginning with you, Ms. Berry, do you agree that civil rights legislation is written to protect the rights of all Americans?

Ms. **Berry**. Mr. Armey, I am glad you asked me that question. I suppose you are referring or you may be, and if you are not, I will refer you to, a statement that was made by Commissioner Ramirez and myself in connection with the commission's statement on the Memphis firefighters case in which we said that civil rights laws—just one second, Mr. Armey—that civil rights laws were not passed to give civil rights protection to all Americans as the majority of this commission seems to believe.

Instead, they were passed out of a recognition that some Americans already had protection because they belonged to a favored group and others, including blacks, hispanics, and women of all races did not because they belonged to disfavored groups.

What I meant, Mr. Armey, is two kinds of things. First, the set of civil rights laws, why they were passed, what their purpose was, passed during the Civil War and Reconstruction; and the second set passed most recently in the 1960's.

What I meant by it, if you will bear with me, since you asked the question——

Mr. **Armey**. Well, please make it quick, because you are using up my time.

Ms. **Berry**. Well, Mr. Chairman, may I have enough time to answer this question, even if Mr. Armey has to have additional time?

The **Chairman**. Well, the Chair will be lenient with Mr. Armey.

Mr. **Armey**. Thank you, Mr. Chairman.

The **Chairman**. And allow him to follow up.

Ms. **Berry**. Right. And I will be as brief as I can, but this is important.

The first set of civil rights laws, we are referring to beginning with the Civil Rights Act of 1866, which is cited at 14 U.S. Statutes-at-Large, pages 27 ff, in which it says that citizens, without regard to race, shall have—that blacks shall have the same rights to full and equal benefit of all laws and proceedings for security of persons and property as is enjoyed by white citizens.

The clear intent of that statute was to give—the purpose of it was to give what whites already had, and it says it right in the statute by white citizens, to blacks.

The second point that I was making is that in the Slaughter-house cases, which are cited at 16 Wallace 36, 1873, of the Supreme Court Reports, Mr. Justice Miller in the majority opinion—this concerns the Fourteenth Amendment, 13, 14, 15—said that, "We repeat, in the light of our recapitulation of events and the history, legislative history," and he says, "these historical events are too recent, really, to be called history." He is talking about the Civil War, "which are familiar to us all. No one can fail to be impressed about these amendments with the one pervading purpose found in them all, lying at the foundation of each and without which none of them would ever have been suggested. We mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freedman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him.

"It is true," he says, "that only the Fifteenth Amendment in terms mentions the Negro by speaking of his color and his slavery, but it is just as true that each of the other articles was addressed to the grievances of that race and designed to remedy them.

"Now," he says, "we do not say that no one else but the Negro can share in this protection. We do not say that," he says, "but what we do say and what we wish to be understood is that in any fair and just construction of any section or phrase of these amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy and the process of continued addition to the Constitution."

In the 1960's what I am referring to when I say that civil rights laws were passed to benefit some people who had been left out in the past and that they had this pervading purpose, whether it is the civil rights law of 1964 concerning race or title IX concerning sex discrimination, which while as it talks about it, focuses on women who are the victims, or whether it is section 504, section 504 of the Rehabilitation Act of 1973—I am talking fast, Mr. Chairman—related to discrimination against people based solely on handicap, or the age discrimination statute of 1978.

They all had a pervading purpose which is attested to in the legislative history.

On the Civil Rights Act of 1964, more particularly, you will find in volume 110, Congressional Record, numerous citations from the legislative history, and some of them repeated as citations in the case of United Steel Workers of America, *AFL-CIO-CLC* v. *Brian Weber,* which is cited at, Mr. Armey, 99 Supreme Court 2721, 1979.

You will find that in the Congressional Record remarks like the following concerning title VII:

> The crux of the problem we are addressing is to open employment opportunities for Negroes in occupations which have been traditionally closed to them.

And elsewhere you will find in the discussion statements which say this does not mean that no one else can sue under these laws, and clearly I would not accept that interpretation either, but if you are talking about the pervading purpose of the civil rights laws, it is clear to anyone, even in this day and age when history is sometimes poorly or not taught in our schools, that the history of these laws will show a pervading purpose and that that is why they were passed.

Thank you very much, Mr. Chairman.

Mr. ARMEY. Of course, that is a very good history lesson, and I appreciate it. But we are talking here about a law that addresses the future. We are talking here about a law that will give no one an escape from the government agency coming in and compelling them to prove their innocence without even a charge of guilt being addressed.

The point is, and again I speak here for many, many people, good and true people who are well mannered, very considerate who wouldn't think of discriminating, who are saying enough is enough and too much of a good thing is dangerous.

What I am suggesting to you is you are putting in jeopardy here a certain violation of all people's rights in this country, to be assumed innocent until proven guilty with no opportunity for them to take any action.

I am further suggesting to you that it isn't programs or activities that discriminate, it is people that discriminate.

Ms. **Berry**. Are you still asking me, sir?

Mr. **Armey**. Would you agree with me that it is people who perform acts of discrimination, or is it programs and activities?

Ms. **Berry**. The idea of using programs and activities goes to your question about guilt, your point about people being innocent until they are proven guilty, which I certainly agree with.

The issue is not guilt. The issue is whether you should receive Federal taxpayers' money that all the taxpayers who don't avoid or evade taxes pay, and to continue to receive them while you are, in fact, engaging in excluding others.

Mr. **Armey**. Isn't the issue here really the issue of whether or not you can opt not to receive them if they are extended to you?

Mr. **Taylor**. Mr. Armey, I think that is a question that we talked about last week, and at the risk of repeating myself I will say that a person who does not receive Federal funds would not, under this statute, assume any obligations not to discriminate with the use of those Federal funds. There is no question about it.

You are seizing on some language that is in the bill that is adopted directly from the regulations that has never received the interpretation that you are giving to it in all the years of the statute.

Now, as to the question of presumptions of guilt or innocence, I guess I would just say, you know, if I apply for Social Security and I am asked to provide some assurance or proof that I am 65 years old and eligible to receive it, I think that is not presuming my guilt.

When I served as a staff director of the Civil Rights Commission, I took an oath to defend and uphold the Constitution, which all Members of Congress take as well.

I didn't read into that oath an assumption that I would otherwise violate the Constitution.

Mr. **Armey**. May I interrupt you long enough to make an observation, that you assume that there is a rational and fair bureaucracy.

When I was the chairman of the Economics Department, making hiring decisions, I was forbidden to ask anybody their race while considering people, and I agree with that. That is quite appropriate.

But later on I was asked by an agency of the Federal Government to report how many black people I had in my employ.

Now, how can I report how many black people I have in my employ if I am not allowed to ask their race?

The agencies to whom you will entrust this law's enforcement are not reasonable. They are overzealous, they are unfair, and they do indeed put people in jeopardy of their civil rights.

Mr. **Taylor**. I guess I would suggest to you that the 20 year history of Title VI and the shorter histories of these other three statutes do not reveal—they may reveal instances of bureaucratic inefficiency, I wouldn't deny that. We have all experienced that. But they do not reveal instances of overzealousness, unfair treatment, of placing obligations on people that they in no way should have.

And I would say to you that to say to a college or university or other recipient of Federal funds that you should provide some assurance that you will treat all people fairly and without discrimination is not overleaning bureaucracy nor is it an assumption of guilt rather than innocence. It is the same kind of thing that I mentioned before where in order to participate in Federal benefits you have to obey certain basic rules of fairness and honesty.

Mr. **Armey**. Mr. Jones.

Mr. **Jones**. Let me make a comment on that, because I think we are scurrying around, again. Every once in a while this happens, we get close to the core issues that we are dealing with here.

The *Grove City* case, Grove City does not think that they have ever received any Federal aid, and to this day, if you ask the administration of Grove City, they will tell you that they do not now, have never received any Federal aid.

What they do is enroll students who receive Federal aid, and to my mind that is a critical distinction. And I have no hesitation whatever in saying I think the Supreme Court was wrong in its decision in the first part of *Grove City,* even though it was a nine to nothing decision and even though apparently the Reagan administration disagrees with me. I think that decision was wrong, that that kind of indirect aid should not be found to be direct aid, and that if it is going to be held to be direct aid, you will have that kind of bureaucratic attention, to give the kindest characterization to it, not only in education but in many, many other areas of life, of our life in the country.

I think that is a critical point. I think if you apply for Federal aid, yes, you ought to be expected to abide by Federal requirements.

That is not the case in Grove City and that is not the case with a number of institutions.

Mr. **Armey**. Well, if I can make a final observation, Mr. Chairman, I believe that consideration and respect lies within the human heart and that there has been a tremendous growth of consideration, respect and acceptance in the human hearts of Americans in this country since 1964, and I am pleased for it.

If we pass this law, you very well will see that undone and indeed you will see a backlash that will hurt all minorities, because the government is going too far with this law and I think that would be the greatest travesty at all to the people who have struggled so long and hard to gain the equal right and consideration that they so rightly deserve in this country.

Thank you, Mr. Chairman.

The **Chairman**. Before yielding to Mr. Hayes, if I may, would you yield me the opportunity to ask Mr. Jones to clarification his statement?

Mr. **Owens**. Mr. Owens will yield.

The **Chairman**. I am sorry. Mr. Owens is next. Yes, I am sorry.

Mr. Jones, you just said in answer to Mr. Armey that in the *Grove City* case that Grove City did not believe that it was actually receiving Federal aid.

Mr. **Jones**. Yes.

The **Chairman**. You said also that in your opinion they were not.

Mr. **Jones**. Yes, in my opinion, they are not, that is correct.

The **Chairman**. Then you disagree, I would assume, with the Supreme Court which said that they were actually receiving aid?

Mr. JONES. Yes.

The CHAIRMAN. And with Mr. Brad Reynolds, who testified before this committee that they were receiving aid, and the Reagan administration? So, you disagree with all of them?

Mr. JONES. Yes. I have already said that I disagree with the Reagan administration.

The CHAIRMAN. I just wanted to place your statement in its context.

Mr. JONES. The Heritage Foundation is so often charged, Mr. Chairman, with being the spear carrier of the Reagan administration, I want to seize this opportunity to indicate that is not always the case.

Mr. ARMEY. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Armey.

Mr. ARMEY. If I might, I would like to take a moment to express my agreement with Mr. Jones.

The CHAIRMAN. Well, at least there are two of you who disagree with the rest of the groups that I enumerated.

Mr. TAYLOR. I would assume, Mr. Chairman, that Mr. Jones also agrees with the decision of the Supreme Court in the *Bob Jones* case, that tax exemption ought to be denied to Bob Jones University if it is pursuing a policy of racial discrimination.

Mr. JONES. I would prefer not to get into the *Bob Jones* case without more preparation.

The CHAIRMAN. That is your privilege, Mr. Jones. Thank you.

Now, Mr. Owens.

Mr. OWENS. Mr. Chairman, this has indeed been a very extraordinary hearing this afternoon, and I don't know where to begin, except to say that I think the threat of a backlash, if you proceed further to lay claim to those rights which are definitely due, exist and there will be a backlash. I think that the backlash smacks of the kind of thing that can take civilization down a dead-end road. It is the kind of thing that Hitler argued, of course, to justify his preparations for war and his making war. The reparations that they had to pay were unjust, and because they had to pay reparations to correct an evil or atone for an evil, they used that as an argument to justify new evils.

And we are talking about evils and the correction of evils, and civil rights law in this country is grounded on the foundation of making an attempt to correct an evil. The evil began with slavery.

And of course, when it is moved further to include women, you are talking about evil that existed since the dawn of mankind.

We are not only traveling in circles, I think we are backing down a very treacherous road. And some of the arguments that have been offered here should have been outgrown. I am happy to say I congratulate George Wallace on the fact that he has outgrown those arguments, and he doesn't stand in a schoolhouse door 20 years later offering up these same kinds of arguments.

Mr. Jones, who didn't really address H.R. 700 in his testimony directly, threw in a number of things which led me to conclude that he fundamentally questions the bedrock of civilization, what civilization is really all about, because of what you were saying, as you talked about the Holocaust and South Africa. The bedrock of civilization rests on the assumption that there is such a thing as group responsibility and group guilt, that when a group has had certain evils perpetrated against them, it is the duty of the group that perpetrated those to make some atonement, to make some corrections.

Otherwise, how do we demand that present day Germany pay reparations to victims of the Holocaust? And how do we demand that countries that make war and lose pay reparations?

To say that every case has to be decided on some kind of individual basis is to say that the Nuremberg trials were illegal, that they should have brought each individual who had had atrocities perpetrated against them and set them forth to testify, otherwise there was no case.

I find your arguments and your fundamental premise to be outrageous in that they are not unusual. They appear from somewhere. This doublethink and doubletalk has originated and it has received widespread distribution. You talk the way a number of people are talking in the effort that they are putting forth to drown this bill in that kind of confusion.

But basically, I would like for you to address yourself for a moment to this basic question: Is there such a thing as group guilt and is there such a thing as group responsibility, is there such a thing as class actions and justification for people to be treated as classes?

Do you say to the Indians that they should not have been put on the reservations as a group, they should have been put on one by one? And to the blacks who endured slavery, do you say that it was an individual thing, each one was singled out and it was determined one by one which should be enslaved and which should be free?

You know, I really would like for you to elaborate on your thesis that, you know, it has to be an individual, we have to address ourselves to individual cases, otherwise we have no basis for attempting to construct law.

Mr. JONES. The short answer to your question, Mr. Owens, is that no, I don't believe that groups do have rights. I don't think Indians should have been put on reservations, either individually or as tribes, and that the fact that they were put there as groups is the basis of many of the troubles that they undergo today.

I think individuals——

Mr. OWENS. But do you think they should sue when they have a suit—they should sue one by one, sue the Government one by one when an injustice is committed against Indian treaties, et cetera?

Mr. JONES. That is right. When individuals—Indian treaties, the whole question of Indian treaties is a very troubling one, because nobody ever decided whether Indians were a separate nation. One nation can make treaty with another nation, certainly, and you don't sue an individual of another nation under a treaty. You are dealing with nations as entities in that case. So that the whole situation is entirely different.

But where an Indian is discriminated against, yes, an Indian ought to bring suit as an individual.

Mr. OWENS. Where an Indian is discriminated against?

Mr. JONES. Yes; nobody should say Indians are an *x* percentage of the population, therefore they are entitled to *x* percentage of the jobs and *x* percentage of the wealth of the Nation, and that we will——

Mr. **Owens**. That is not an argument I am making. I am talking about rights. The majority rules but the minority has rights. The Constitution was written to guarantee certain rights.

Mr. **Jones**. To individuals, that is correct.

Mr. **Owens**. To individuals?

Mr. **Jones**. Yes.

Mr. **Owens**. And when those individuals are in large groups, such as blacks who were enslaved for several hundred years, corrective action cannot be taken and that cannot be recognized in law? I mean, the answer Ms. Berry gave before should be put in bronze, because what she said is that it has been decided in this country by precedent that to correct an evil certain laws shall be written. We have proceeded from that base and that is the basis for civil rights laws which have been expanded to include other minorities.

In the case of women, it wasn't exactly the same. It went back and recognized that human rights and civil rights really rest on a larger human rights concern, and women have been discriminated against since the world began and it is seeking to correct that evil.

So, it is already pretty much fundamentally established in law, and you said we have made an error, American law has made an error.

Mr. **Jones**. I strongly support the 1964 civil rights law, which establishes the equality of all individuals before law in the United States.

I disagree, respectfully and firmly, with interpretations of the 1964 law which have held that it requires or permits the aggregation of individuals into groups and that rights can be conferred on those groups, and I do so for the precise reasons that I indicated in my oral testimony, that when benefits are allocated on the basis of groups and not to individuals, among other things you will have the difficulty of deciding who belongs to those groups and who therefore qualifies for the benefits.

And if you don't think I am serious about that, you look at what is happening on Indian reservations right now, where benefits are paid to Native American individuals and people who, by most judgments of common sense, have no business on the reservation or belonging to an Indian tribe because they have Indian blood in their veins, whatever the heck that means, are asserting claims to benefits, to property and to monthly payments from the Federal Government on the basis of their membership in a racial group. And I think that is a prescription for disaster, whether it is for purposes of gaining benefit or for excluding people.

And I am thankful to the Lord that we no longer have that kind of classification in our law, and I would hate to see it assert its head again.

Mr. **Owens**. No further questions, Mr. Chairman.

The **Chairman**. Thank you.

Mr. Hayes.

Mr. **Hayes**. Mr. Chairman, I have one or two questions, I guess. I am just a little bit shocked, having participated, as you well know, in most of the field hearings throughout the country, where the testimony has been overwhelmingly in support of H.R. 700, to come here to the seat of what is to be, I guess, the enforcement branch if this law is passed and hear the kind of testimony from a person who I have known and respected for years, because we have been—I am still a part of the Urban League and I understand, by background, that you, Mr. Pendleton, were formerly an executive director of that organization. I think I ran into you on occasions at conventions of the Urban League, an organization who is respected for its position in terms of fairness, and I am sure has stood up, as I had done as a member of the trade union movement, and supported the passage of some of these statutes, including the Civil Rights Act of 1964, which is now, according to the testimony that we have heard, with some substantiations of that position, is being threatened.

It is pretty tough to be here, a handicapped person, being told by a doctor who is a recipient of Medicare checks, and they are doing quite well at it, that I don't want to build a ramp to make my office accessible to a person who may be handicapped. He doesn't think he should be required to do that because of the cost involved.

He asked the question, I believe, and Chairman Edwards can attest to this because he had the hearing, as to where does this really end.

I asked him the question, where does it begin with you, because I think this is fundamental here.

I am bothered about whether or not we are going to be able to pass this kind of legislation given the direction we may be going now. It appears to me, and to a lot of other people concerned about this, are we going to run into the kind of opposition we ran into in the Senate if we pass it in the House? These are questions that I think have to bother me.

The thing that I want to say to you, Mr. Jones, and I want to say to Dr. Berry, you said—you used the statement, as a member or the head of the Heritage Foundation, you think that we ought to pull back from H.R. 700. Let me know if I misunderstood you. I want to know, pull back to where, first?

Mr. JONES. I think the enactment of H.R. 700 would be a mistake, yes. I would take my stand with the 1964 Civil Rights Act, which enacts the legal equality of all individuals before Federal law in the United States.

Mr. HAYES. You heard what Dr. Berry said, and I happen to share this opinion. Seeming to me the direction we are going now in this Commission is to justify our retreat on civil rights. Isn't that what you said?

Mr. JONES. I don't regard——

Mr. HAYES. Dr. Berry, didn't you say that?

Ms. BERRY. I think that is true, Mr. Hayes, and I wanted to say that Mr. Jones said that he thought we should go back to the meaning of the Civil Rights Act of 1964, which is what H.R. 700 tries to do.

Mr. HAYES. That is what I thought.

Ms. BERRY. And one of the curious things about this debate, I had thought on this issue and on the whole field of civil rights today, it is not just people saying that they would like to retreat and to weaken enforcement and to make arguments that they have made before and refight old battles. In a sense, I am wrong about that. It is more than that. It is much more fundamental.

It is that people are really saying that we will interpret what happened before, we will change history, that is one thing we will do. We will rewrite history so that we can say that what happened in 1964, which people marched down the street for and went to jail and some died, that what they marched and died for, black folks, white folks, wasn't really what the record, the Congressional Record will show or the papers will show or all the things that they thought happened, that that really wasn't what happened. And that the enforcement record that has been made all these years, by Republicans and Democrats and Independents running these agencies, who have come up here and testified to say that all they did was enforce what H.R. 700 would require, that those people are all not telling the truth, or if they are, they shouldn't have been doing it in the first place because Congress never intended to do this.

So, it is sort of like—I guess I wouldn't be so offended if people simply said they didn't like enforcing civil rights laws broadly and that they thought they had public opinion on their side to change that, and that they also felt that it was better to change it, for whatever reasons they have got in mind.

What I resent is trying to rewrite the reality of the past, and there are some people who are in their graves who can't stand up and cry out, you are wrong.

And then we are supposed to sit here and listen to that and agree with it, and then go on as if we take seriously what they say.

I just find that absolutely reprehensible and disingenuous.

I don't know if you asked me that, but that is how I feel, Mr. Hayes.

Mr. HAYES. I want to ask a pointblank question to Mr. Pendleton, so I can clearly understand your position.

As head of the Civil Rights Commission, is your position that an organization, an educational institution, be it that or some other organization that is a recipient or have people who use that facility are recipients of Federal funds, should they be able to continue to get Federal funds or be a recipient of Federal funds if they discriminate because of race, sex, the handicapped condition or the age of the person who uses that, who wants to attend or use that facility?

Mr. PENDLETON. At the risk of saying anything else, I might confuse—I just want to say no, I don't believe that is the case at all.

Mr. HAYES. Can you make the distinction?

Mr. PENDLETON. I think there is no distinction to be made. If you directly receive Federal money, you should not be allowed to discriminate.

What I said in my testimony was that we believe, the majority of the Commission believes that indirect aid in private institutions should not come under this expansive coverage, and that is all that we have said.

I think when the chairman asked me about cancer operations and the like, and I talked about the statutes, I was very unclear, and what I am really saying is that those laws, if you receive a research grant some place else, those laws certainly trigger off these kinds of coverages in the four cross cutting statutes. I think that is clear.

But I do not believe that anyone who receives Federal money should discriminate or be allowed to discriminate. That is very clear with me.

In spite of what is being said here today, in spite of some of your shock, I am a supporter of the 1964 Civil Rights Act. Like many of you, I marched at that time, I did a lot of things at that time myself.

I think what has happened is that many people tend to confuse my pigment and my politics and that is regrettable, but I believe what I believe in a very, very sincere way.

There can be more than one way to interpret what is going on and I have a way of interpreting that that I think is as correct as your way, or Dr. Berry's way or somebody else's way of interpreting where we go with these things.

And just to make clear the first answer, the answer to that question certainly, sir, is no.

Mr. Hayes. Do you think the doctor was right for taking a position, who is a recipient of Medicare checks and things of this sort, of saying he couldn't or didn't want to revise his office to make it accessible to handicapped people?

Mr. Pendleton. No, I don't think he was right at all. He took the money, he should do what has to be done to comply with the law.

Mr. Hayes. No further questions.

Mr. Taylor. Mr. Chairman, may I make a brief comment on the questions that Mr. Hayes asked?

The history of the 1964 act has been invoked so many times that it is hard to resist talking about a little bit of history.

You know, after *Brown* v. *Board of Education* was decided in 1954, some Southern States came forward with the notion that despite the fact that it was State policy that segregated people in the public schools, that the way to deal with that was to set up something called pupil placement, and students one by one would apply to be made exceptions to the rule of segregated public schools. And if you persuaded the pupil placement board and then went through all the appeals, you could get into a school that was not segregated on the basis of race.

And, of course, they said that is treating people as individuals, not as members of a group.

I hear the same echoes in the testimony here today, that we must treat people as individuals rather than as groups, even if they have been subject to the most invidious kind of group discrimination.

Second, this is not such ancient history, because it is still with us. But we had all of these segregationist academies set up throughout the South. And eventually the Supreme Court ruled in interpreting not just the 1964 act but the 1866 Reconstruction Act, that even if those institutions didn't receive a dime in Federal assistance they were prohibited from discrimination.

And now I hear today suggestions that even if they do receive Federal assistance it is somehow an intrusion on their privacy and private property rights for them to adhere to fundamental national policy against discrimination.

So, I agree wholeheartedly with Dr. Berry. What we are witnessing here is not just a debate about H.R. 700, but an effort to go back and undo the history of the last 20, 25 years.

Mr. PENDLETON. Mr. Hayes, if I could, I think that Mr. Taylor makes interesting comments. I think it is fair, he has fairly characterized what some of us believe about individual rights.

I see nothing wrong with that interpretation at all. To say that one wants to undo what has happened and retreat, I don't think that is the case at all.

I think there are those of us who do believe in individual rights and the individual rights concept and theory. To say that we believe in that is a throwback, I don't think is completely fair to the kinds of things that we have been saying and the kinds of things we believe.

What is very clear is that none of us believe in discrimination against anybody, anytime, for any reason, and I believe that those people who are discriminated against need to be made whole.

I do not subscribe to the theory that groups of people need to be made whole absent a finding of discrimination of each member of that group. That is very clear with me.

I went to the Commission with that position, I have testified that way, and that is where I am and where most of my commissioners are.

I think if you see anything about the Civil Rights Commission, you do see that there is a difference of opinion and people have the individual and independent right to express their own opinions.

What is also interesting here is that we don't tend to put people down for their opinions, and I think that we will not do that.

I am prepared to accept all the putting down one wants to give me. That does not dissuade me from believing what I believe. And putting one down for one's opinion does not provide a solution to the problem.

I still believe that this legislation is expansive and unwarranted, an intrusion of the Federal domain where it has never gone before, and I would just say that this should not happen, and I would agree with Mr. Jones in this case and much of what my colleague from the chamber of commerce has said. And I make no apologies for it.

The CHAIRMAN. If the gentleman would yield, in respect to the Commission's position, Mr. Pendleton, on support of the Dole bill, which I assume the Commission does support; does it?

Mr. PENDLETON. We have not supported anything at all. We just made a comment about this piece as it came about. I don't recall how we supported the Dole bill at all. I don't see reference to that in my statement.

But if you would, Mr. Chairman, I would like to include for the record, since we have a dissenting opinion, another affirming opinion from two of my colleagues, Commissioner Abram and Commissioner Bunzel.

The CHAIRMAN. You have made no mention or you have not——

Mr. PENDLETON. No; we have not made any mention about the Dole bill at all.

The Chairman. Any support to the Dole bill?

Mr. Pendleton. No; we have not.

The Chairman. And you have no personal opinion on the Dole bill?

Mr. Pendleton. No, sir.

The Chairman. Mr. Edwards.

Mr. Edwards. I have no questions.

The Chairman. If there are no further questions, again the Chair would like to thank the witnesses this afternoon. It has been a very exciting panel, and although there have been differing views, I certainly want to commend you on the manner in which you have conducted the presentations.

That concludes the hearing.

[Whereupon, at 4:58 p.m., the committee was adjourned.]

[Additional prepared statements, letters and supplementary material has been retained in committee files.]